

# OCEANOGRAPHY MISCELLANEOUS—PART 1

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON OCEANOGRAPHY  
OF THE  
COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES  
NINETY-NINTH CONGRESS  
FIRST SESSION  
ON  
NATIONAL OCEAN SERVICE CENTER PROGRAM  
JULY 25, 1985  

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ABANDONED SHIPWRECK ACT (H R. 3558)  
OCTOBER 29, 1985  

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Serial No. 99-19



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# NATIONAL OCEAN SERVICE CENTER PROGRAM

THURSDAY, JULY 25, 1985

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OCEANOGRAPHY,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC*

The subcommittee met, pursuant to notice, at 9 45 a m , in room 1334, Longworth House Office Building, Hon Barbara A Mikulski (chairwoman of the subcommittee) presiding

Present Representatives Mikulski, Tallon, Studds, Hughes, Lowry, Shumway, Saxton, and Miller

Staff present Jack Archer, Janet Nethercutt, Ruth Segal, Donna Johnson, Larry Flick, Brooks Bowen, Gina DeFerrari, Dan Ashe, Curtis L Marshall, Barbara Cavas, Tom Kitsos, KC Bell, Kurt Oxley, and Duncan Smith

## OPENING STATEMENT OF HON BARBARA A MIKULSKI, A US REPRESENTATIVE FROM THE STATE OF MARYLAND, AND CHAIRMWOMAN, SUBCOMMITTEE ON OCEANOGRAPHY

Ms MIKULSKI Good morning, everyone I would like to call the Subcommittee on Oceanography to order and proceed on this oversight hearing related to the National Ocean Service Center Program

We are going to hear testimony today on the National Ocean Service Center Program from Mr James Winchester, the Associate Administrator of the National Oceanic and Atmospheric Administration, from Dr Ken Ruggles, president of Global Weather Dynamics of Monterey, CA, and from Mr Gordon Hall, vice president of the Lake Carriers' Association of Cleveland, OH

NOAA produces many different kinds of marine information products and services, including weather warnings and forecasts for ocean and coastal area, fishery information, nautical charts, tide tables, and a great variety of technical and scientific data related to the oceans and atmosphere

These products and services have been traditionally available to users through various NOAA offices that produced them In 1983, NOAA developed the idea of using regional ocean service centers to market its marine products and services These centers are supposed to function as one-stop shopping centers for all of NOAA's marine products and services and to lead to better service and improved products

To test this concept, NOAA established the Northwest Regional Ocean Service Center at Seattle in December 1983 and the Anchorage Center in 1984 Today, we are going to examine how well the

concept has worked in Seattle and Anchorage and what NOAA has learned from these prototype operations

One feature of the National Ocean Service Center Program is the use of back-up centers to provide improved marine information products to the regional centers. These backup centers are the National Meteorological Center, the Navy and NOAA Joint Ice Center, and the Navy Fleet Oceanography Center. We are going to hear today how these back-up centers have performed in preparing marine products for distribution through the regional centers and what improvements might be needed as NOAA opens other regional centers around the Nation.

NOAA has indicated that it might revise its original ocean service center plan in order to create a substantial role for the private sector in operating regional centers and marketing NOAA's marine products. This proposal to privatize ocean service centers needs careful consideration. I am particularly concerned by statements that NOAA intends to curtail or eliminate certain products or services in order to attract private sector interest in operating regional centers. Documents provided to this subcommittee speak of granting exclusive rights to private contractors in marketing NOAA's marine products and providing them with operating subsidies.

These proposals raise serious questions about the way NOAA interprets its mission. My colleagues and I on the subcommittee want to ensure that these efforts to privatize the operation of regional centers are examined carefully and that the laws authorizing and requiring NOAA to provide marine products and services to the public are fully complied with.

The National Ocean Service Center Program came up this spring during this subcommittee's consideration of the administration's budget. At that time, we stated that we would not support the administration's request to rescind funding for the program and that we would conduct oversight of the program to satisfy ourselves to see whether the program merits our support. With this goal in mind, I think it is timely for us to have this hearing now.

I would like to remind my colleagues and the witnesses that we will be following the 5-minute rule in both oral testimony and questions. We will also have written questions for NOAA in addition to today's hearing.

Mr. Shumway, do you have any comments you wish to make?

#### STATEMENT OF HON. NORMAN SHUMWAY, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. SHUMWAY: Yes, thank you, Madam Chairman.

I appreciate your convening this hearing. I think it is most appropriate that we examine the Ocean Service Center Program. This is a relatively new program. It is still in its formative years, and I think it is very appropriate that now we pause to see whether there is a real need for it and whether it meets that need and whether we should be expanding it in the future.

When we considered the fiscal year 1986 budget and reviewed ocean and coastal programs in that budget, this subcommittee recommended a deferral of the \$4.9 million in fiscal year 1985 funding for the three new proposed centers. That deferral request was

based on the sensible reasoning that our subcommittee should conduct oversight hearings like this one this morning on the two recently established centers before we move ahead with obligating more Federal money for as many as perhaps nine new centers

Unfortunately, the Appropriations Committee did not concur with our request regarding the fiscal year 1985 funding, and they have seen fit to appropriate an additional \$5 65 million in fiscal year 1986 to further expand this program

I think during these times of fiscal shortfall when we are all very concerned about the Federal budget, I think it is very fitting that we be sure we are spending money in a way which meets national priorities, in a way which will be effective and needed for this Nation Therefore, I think this subcommittee today is pursuing a very meaningful role when we review Ocean Service Programs and decide whether these centers are indeed effective and needed

I therefore commend you, Madam Chairman, for your decision to go ahead with this hearing despite the actions of the Appropriations Committee Like you, I am most interested in NOAA's proposals to privatize these centers, and I look forward to discussing that more with our witnesses I would like to take this opportunity to welcome all of the witnesses who are here this morning

Thank you

Ms MIKULSKI Thank you very much

Mr Saxton?

Mr SAXTON I have no statement at this time, Madam Chairman

Ms MIKULSKI Mr Miller?

#### STATEMENT OF HON JOHN R MILLER, A U S REPRESENTATIVE FROM THE STATE OF WASHINGTON

Mr MILLER Thank you very much, Madam Chairwoman

The subject of today's oversight hearing is the National Ocean Service Center Program One of the pilot centers, Madam Chairwoman, is located in my district at Sand Point I have toured the facility and received excellent explanations of what that facility at Sand Point Naval Air Station is doing

The Service Center Program, as I understand it, is an effort to decentralize the system for distributing information from NOAA so it better serves the public That makes this hearing interesting to me as we inquire further about the program Finally, the administration has made some interesting proposals for privatizing these centers and, as Mr Shumway stated, as one, who is concerned about the deficit, I welcome the administration's efforts to find the most cost effective way for NOAA services to be provided

I should add that I have a particular special concern The Naval Air Station at which this center is located is one of the military installations that appears on the various lists that Secretary of Defense Weinberger and Senator Goldwater periodically distribute as possible military base closures The closing of that facility may be a good idea if hard savings can be achieved If that turns out to be the case, then, obviously, people in the Seattle area are concerned about the employment mix at that facility NOAA, as a major employer, will be the major employer in the absence of the Navy

Therefore, I am interested as we go into this as to the effect of the administration's privatizing proposals on the total job mix at that particular center or at any center I assume that privatizing reduces Government employment which may be good, but I am interested in facts or even conjecture as to whether the privatizing will lead to spin-offs that will create more private employment in this area that might be located adjoining centers

I recognize, Madam Chairwoman, that the service center program is relatively new I think from what I saw in Seattle that there is substantial merit to locating these centers around the Nation I am interested in how these centers work with the private users of NOAA's services, how the administration's proposal will alter these relationships

Thank you

Ms MIKULSKI Thank you very much, Mr Miller You raise some important questions

The Chair would like now to call to the witness table Mr James Winchester, the Associate Administrator of NOAA

Mr Winchester, the committee welcomes you as the Associate Administrator I believe this is the first time you are formally testifying before the committee We give you a most warm welcome and look forward to your testimony on this subject

**STATEMENT OF JAMES W. WINCHESTER, ASSOCIATE ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE**

Mr WINCHESTER Thank you, Madam Chairwoman

I would like to introduce, on my left, Donald R. Montgomery He is Director of our Ocean Service Program in NOAA I have asked him to join me here at the table, with your permission If there are some details that I don't have immediately at hand, he can help me with them

For the record, I am James W. Winchester, Associate Administrator of NOAA I have submitted a fairly lengthy testimony which I would request be included in the record

Ms MIKULSKI Hearing no objection, so ordered

Mr WINCHESTER For my oral presentation, I will just summarize that written testimony

It is certainly a pleasure to appear before this committee The program that we are going to talk about this morning supports three major goals of the Department of Commerce The first goal is to improve delivery of services, especially of ocean information products and services The second is to manage effectively the Nation's oceanic resources by providing timely data and information to U.S. industry Third is to stimulate productivity and economic development by promoting growth of oceanic and atmospheric industries

Now, the Ocean Services Program has both a regional and a national focus There are three basic components of the total program one, ocean data collection, two, national centers, and, three, the regional ocean centers It is the implementation of the regional centers that I would like to concentrate on in my summary statement

A public/private sector partnership concept which NOAA is proposing is based on an awareness that the ocean community requires an improved program in ocean services but that the Government neither can nor should continue to provide an expanding system of services from general revenue in a period of exponentially increasing Federal deficits. Limited Federal resources must be devoted to developing new technology and to fully utilizing the growing data base from satellites and conventional data acquisition sources. Under this concept, functions associated with ocean data collection and operation of the national centers of the total Ocean Services Program should be a total responsibility of Government and would continue to be funded by appropriations.

The delivery of ocean products and services to the general public would be provided by the third element of NOAA's Ocean Services Program, the regional ocean service centers. We are seeking a partnership with the private sector to operate these centers.

A commercial value added industry exists which is equipped to prepare, deliver, and market ocean services and products to industrial users and the general public at no cost to the Federal Government. The public/private partnership concept would permit industry to have a lead role, in cooperation with NOAA, in operating these ocean service centers.

A NOAA task team under my direction currently is working full-time to develop a detailed ocean services plan which seeks to better define the appropriate role for the Federal Government and industry and to develop implementation mechanisms which would allow increased private sector participation in providing ocean data, products, and services to users. This project is of high priority in NOAA, and we appreciate the opportunity to present a brief description of the program and to update the subcommittee on our current efforts in the preparation of this detailed plan. NOAA intends to present our proposed ocean services plan to the Congress on September 1, 1985.

Under this public/private partnership, NOAA would deliver national guidance products prepared at the national centers to the regional centers by electronic means. NOAA would also retain responsibility for providing severe storm warnings from the centers on the types of storms that are critical to the safety of life and property and to the general welfare of the U.S. coastal population.

New opportunities would exist for the private sector under this partnership. The private sector would continue to receive data and products from the national centers. However, under this plan, the national center products would be available regionally at less cost to industry because all of NOAA's products would be available through a single electronic source.

As it does now, the value added industry would continue to market tailored projects and ocean products but with no competition from Government. As part of a Government/industry partnership and based on this additional incentive, the value added industry partners would agree to provide general marine products and routine weather forecasts for coastal waters at no direct cost to public users.

We anticipate that the value added industry can generate revenues not only through fees to clients for marine products and serv-

ices but also through sales of advertising to the commercial media and by sales of products to trade associations for dissemination to their members. There are many examples of how services are provided to the general public at no cost to the Government or no direct user fees to individuals. The meteorologists on television are a good example.

As part of our effort to develop the plan for submission on September 1, NOAA will conduct a series of four business meetings with industry during July and August. The objective of these meetings is to assess both industry's interests to participate in the operation of the regional centers without cost to NOAA and to define the specific products and services for which there is an existing or potential market. The first meeting was held yesterday. Because of that timing, I am unable to report on the results of our first meeting in this testimony but would be glad to respond to questions.

NOAA's complete plan proposes a core set of seven centers at the following locations: Anchorage, AK, Seattle, WA, New Orleans, LA, Newark, NJ, Charleston, SC, and Honolulu, HI. A site in the Great Lakes also is proposed, and the selection of a candidate location currently is the subject of an intensive study being led and conducted by our study team. Results of that report will also be available as part of our final ocean service plan to be delivered to the Congress on September 1, 1985. NOAA proposes to be prepared to implement a pilot demonstration of the public/private partnership concept with industry participation in the Seattle and Anchorage centers shortly thereafter.

Our estimates of cost avoidance to the Government by operating the centers in partnership with the value added industry are as follows: First, one-time savings for the initial startup for seven centers is about \$4.2 million. Second, annual cost avoidance for operation of the seven centers is \$5.4 million. Part of that total would be savings in personnel costs of seven full-time equivalent [FTE], positions per center. The phased consolidation of marine advisory and warning services at the seven regional centers could result in additional personnel savings of about 40 FTE.

The cooperative public/private aspect of the ocean services program is not new. Since inception of the ocean service center concept, NOAA has sought cooperation and information exchange with both value added businesses and the marine user community.

Our experience to date with the two existing centers in Seattle, WA, and Anchorage, AK, has demonstrated a strong demand for improved products and services, particularly among industry groups. In a representative 3-month period, the second quarter of fiscal year 1985, at the Seattle Center, almost 40 percent of the requests for information came from industry. The consultant value-added industry which we are hoping to have partnerships with accounted for about one-third of that industry total. That indicates that the current activity in tailoring specialized products for specific clients based on NOAA data guidance is a reasonably viable business at the present time.

A question has been raised about the relationship between this private sector approach for regional ocean service centers and the Productivity Improvement Program promulgated by OMB Circular A-76. I want to assure the subcommittee that there is no direct

connection While the basic policy of increasing Government efficiency and effectiveness and not competing with the private sector does underlie both, the strategy for working with the private sector in ocean service centers does not parallel the OMB Circular A-76 process

OMB Circular A-76 requires that all executive agencies not exempt by law conduct a study of their commercial/industrial activities that are being performed by Federal employees to determine if those activities can be performed under contract, paid for by the Government, with commercial sources more economically than they are currently being performed by Federal employees On the other hand, the premise of a public/private partnership concept is that commercial industry should provide the tailored services and products that benefit only specific elements of our economy and small segments of our society as a business enterprise, not as a federally funded service

This concept is based on an administration policy that Government should not compete with its citizens by providing goods and services from general revenues that rightly should be supplied by commercial sources at no cost to the Government

In summary, NOAA is committed to the ocean services program and to the centers as a delivery mechanism, and we are seeking the most efficient and cost effective means of implementing the program which we believe to be a public/private partnership arrangement As mentioned, NOAA will submit an ocean services plan to the Congress on September 1 We look forward to your responses and to a continued dialog with you as we work toward meeting this Nation's ocean services needs

Madam Chairwoman, that concludes my summary statement I will be happy to answer questions at this time

[Prepared statement of Mr Winchester follows]

PREPARED STATEMENT OF JAMES W WINCHESTER, ASSOCIATE ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U S DEPARTMENT OF COMMERCE

Madam Chairwoman and members of the subcommittee I am pleased to appear before you today to testify on the Ocean Services Program of the National Oceanic and Atmospheric Administration (NOAA) This program addresses two major sub-goals of the Department of Commerce (DOC)—to provide more timely and accurate weather forecasts and warning services to the US public, and to improve delivery of ocean information, products, and services

The marine community in the coastal zone, the Exclusive Economic Zone, and the Great Lakes is diverse, representing recreation, transportation, oil and gas development, fisheries, coastal construction, and value-added industries These are significant and rapidly growing sectors of the economy To be safe and effective, almost all aspects of their operation require marine environmental data, marine weather information, and forecasts and warnings As the marine community continues to grow, it will generate greater demands for delivery of products and services in a more timely manner At the same time, improved technology and real-time capability in the Government and private industry, and the dramatically expanding number of satellite derived observations and related products are making possible new categories of marine products and services This is an opportune time for Government to review its appropriate role and examine the potential for cooperative partnership with the private sector in cost-effective and efficient provision of marine products and services

In response to this need, the NOAA Ocean Services Program, initiated in early 1983, was established formally by an Administrator's Letter in November 1983 Its goal is to integrate NOAA's ocean products and services, and improve the delivery

of marine services to the public. There are three vital components of the Ocean Services Program including the Centers:

The first component is ocean data collection. Near realtime ocean observations collected on a global scale are the "foundation" or the "raw materials" for generating ocean products and services. Modern computer models require a complete description of the state of both ocean and atmosphere to produce accurate forecasts. In addition, understanding long-term climate changes requires long time-series of observations. In addition, timeliness is critical. New oceanic satellite sensors such as the Navy's NROS ocean satellite will provide enormous increases in ocean observations and could revolutionize our ability to predict weather in the short-term. An improved suite of surface ocean observing platforms (ships-of-opportunity, buoys, etc.), greater dispersion of observations over the world's oceans, and enhanced availability are an important complement for this new technology. Improved ocean data collection will provide verification (ground truth) for the growing data base of satellite derived information, enhancing its accuracy and usefulness.

The central facilities for receiving and assimilating global oceanographic and atmospheric observations will be the National Ocean Centers, the second component of the Program. The National Centers will be responsible for processing, dissemination, quality control, and generation of basic operational oceanographic and meteorological analyses and forecasts.

The National Centers will deliver nationally prepared "guidance" products which will form the basis for marine forecasts, advisories, and warnings at the regional level. The value-added industry also can receive the national guidance data and products for use in their specialized products and services for sale to particular clients. In addition, the center will conduct numerical model development to improve NOAA's national products.

The Ocean Services Program will have three National Centers. The Ocean Products Center (OPC) is collocated with the National Meteorological Center in Camp Springs, Maryland. OPC operates in an integrated fashion, coordinating the efforts of NOAA personnel for oceanographic/marine weather product development and operation. An Ocean Applications Group is proposed at the Navy's Fleet Numerical Oceanography Center in Monterey, California, for quality control and data analysis to support both operations and research programs, and to exchange data and products with the Navy. The Navy/NOAA Joint Ice Center in Suitland, Maryland, provides operational analysis and forecasts of ice conditions and dynamics, in the Arctic, Antarctic, and Great Lakes Region for Government and Industry.

The delivery of ocean products and services will be provided by the Ocean Service Centers. A network of centers will improve the delivery of and access to ocean services, and by increasing interaction and communication with marine-oriented users will result in improved, more useful products and services. The Centers will integrate NOAA's ocean service capabilities providing "one-stop" access to products and services. The Centers will serve as a focal point for NOAA interaction with both the public and private sector value-added industry.

A very brief background on the Ocean Service Center concept, as the Subcommittee is well aware, starts with the prototype Center, established in Seattle, Washington, in October 1983. A joint DOC/NOAA review team evaluated NOAA's ocean services in the context of the prototype Northwest Ocean Service Center (NOSC). The review team submitted its report to the Deputy Secretary of Commerce in June 1984, recommending that NOAA should pursue the ocean services concept and develop an implementation plan. Subsequently, a second center, the Alaska Ocean Service Center (AOSC), opened in Anchorage in July 1984.

Experience to date with these two Centers clearly has demonstrated a strong demand in the marine user community for improved products and services. User response to the Center has been strong. Through May 31, 1985, a total of over 2,500 and 930 user requests have been handled in NOSC and AOSC, respectively. The Centers receive a wide range of inquiries which vary from technical and complex to simple requests.

Looking at a representative 3-month period, the second quarter of FY 85, at the Seattle facility, 376 user inquiries were recorded. The academic community accounted for 22 percent of the total, government (Federal, state and local) another 18 percent, and the general public generated 18 percent of the inquiries.

The largest category of users was industry—representing 38 percent. The major components of the industry category are the consultant value-added industry—30 percent, fishermen—15 percent, marine construction—10 percent, marine transportation—4 percent, trade associations—11 percent, and the news media—5 percent. These percentages are fairly representative of the experience to date at NOSC.

In terms of product category, the same second quarter FY 85 period showed that almost one-half of the recorded inquiries were for oceanographic products and information, one-fifth for meteorological products and services, another one-fifth for general NOAA information, and small percentages for cartographic products (6%), and for freshwater biological/water quality/environmental information (5%) These percentages are characteristic of the nature of requests which have been received at NOSC

To briefly characterize the principal types of products or services requested by each user category during the same January-March 1985 period Academic inquiries were most frequently for oceanographic (48%), general (34%) and cartographic (11%) information Government inquiries were most frequently for oceanographic (52%), general (26%), and meteorological (21%) products and services Industry most often requested oceanographic (52%), meteorological (25%), and general (13%) information In priority order, the general public requested oceanographic (35%), meteorological (25%), and freshwater biological (22%) data, products, and services

Our Ocean Service Center program seeks to clarify the appropriate role for the Federal Government and provide for increased private sector participation in providing ocean data, products, and services We are seeking a partnership with the private sector to operate these centers A commercial value-added industry exists which is equipped to prepare, deliver, and market ocean services and products to industrial users and the general public at no cost to the Government The public/private partnership concept would permit industry to have a lead role, in cooperation with NOAA, in operating these regional ocean service centers

A public/private sector partnership concept is based on an awareness that the ocean community desires an improved program in ocean services, but that the Government neither can nor should provide an expanding system of services from general revenue in a period of exponentially increasing Federal deficits Limited Federal resources must be devoted to developing new technology and to fully utilizing the growing data base from satellites and conventional sources Under this concept, functions associated with ocean data collection and operation of the National Center components of the Ocean Services Program should be a total Government responsibility, and would continue to be funded by appropriations

A NOAA task team under my direction currently is working full-time to develop an Ocean Services Plan which seeks to develop implementation mechanisms to allow increased private sector participation in providing ocean data, products, and services to users This project is a high priority effort, and we appreciate the opportunity to present a brief description of our program, and update the Subcommittee on the current efforts in preparation of this detailed plan NOAA intends to present our proposed Ocean Services Plan to the Congress on September 1, 1985

Under this public/private sector partnership, NOAA would deliver national "guidance" products, prepared at the National Centers, to the centers by electronic means NOAA also would retain responsibility for providing severe storm warnings from the centers that are critical to the safety of life and property and to the general welfare of the US coastal population

New opportunities would exist for the private sector under the partnership The private sector would continue to receive data and products from the National Centers However, under this plan the National Center products would be available regionally, at less cost to industry because all of NOAA's products would be available through a single electronic source As it does now, the value-added industry would continue to market tailored weather and ocean products, but with no competition from NOAA

We anticipate that the value-added industry can generate revenues not only through fees to clients for marine products and services, but also through sales of advertising to the commercial media and by sales of products to trade associations for dissemination to their members

As part of our effort to develop the plan for submission on September 1, NOAA will conduct a series of four business meetings with industry during July and August The objective of these meetings is to assess both industry's interests to participate in operating the regional centers without costs to NOAA, and to define the specific products and services for which there is an existing or potential market The first meeting was held yesterday Because of that timing, I am unable to report on the results in this testimony, but would be glad to respond to questions

NOAA's complete plan proposes a core set of seven centers in these locations Anchorage, Alaska, Seattle, Washington, New Orleans, Louisiana, Newark, New Jersey, Charleston, South Carolina, and Honolulu, Hawaii A site in the Great Lakes also is proposed, and the selection of a candidate location currently is the subject of an intensive study being led and conducted by our study team Results of

that report also will be available as part of our Final Ocean Services Plan to be delivered to Congress on September 1, 1985 NOAA proposes to be prepared to implement a pilot demonstration of the public/private partnership concept, with industry participation, in the Seattle and Anchorage Centers shortly thereafter Our estimates of cost avoidance to the Government by operating the centers in partnership with the value-added industry are as follows

A One-time savings for the initial start-up costs for seven centers, \$4 2 million

B Annual cost avoidance for operation of the seven centers, \$5 4 million

Part of that total would be savings in personnel costs of seven full-time equivalent (FTE) positions per center The phased consolidation of marine advisory and warning services at the seven regional centers could result in additional personnel savings of 40 FTE

The cooperative public/private aspect of the Ocean Services Program is not new Since inception of the Ocean Service Center concept, NOAA has sought cooperation and information exchange with both value-added businesses and the marine user community Our experience to date with the two existing Centers in Seattle, Washington, and Anchorage, Alaska, has demonstrated a strong demand for improved products and services, particularly among industry users As I mentioned earlier, almost 40 percent of the user inquiries at the Northwest Ocean Service Center in a 3-month period were recorded in the industry category The consultant value-added industry accounted for one-third of this industry total, indicating the private sector's considerable current activity in tailoring specialized products for specific clients based on NOAA data and guidance products

A question has been raised about the relationship between this private sector approach for ocean service centers and the productivity improvement program promulgated by OMB Circular A-76 I want to assure the Subcommittee that there is no connection While the basic policy of increasing Government efficiency and effectiveness and not competing with private industry does underline both, the strategy for working with the private sector in ocean service centers does not parallel the OMB Circular A-76 process OMB Circular A-76 requires that all Executive Agencies not exempt by law conduct a study of their commercial/industrial activities that are being performed by Federal employees to determine if those activities can be performed under contract with commercial sources more economically than they are currently being performed by Federal employees On the other hand, the premise of a public/private partnership concept is that commercial industry should provide the tailored services and products that benefit only specific elements of our economy and small segments of our society as a business enterprise—not a Federally funded service This concept is based on an Administration policy that Government should not compete with its citizens by providing goods and services from general revenue that rightly should be supplied by commercial sources at no cost to the Government

In summary, NOAA is committed to the Ocean Services program, and to the centers as a delivery mechanism, and we are seeking the most efficient and cost-effective means of implementing this program, which we believe to be a public/private partnership As mentioned, NOAA will submit an Ocean Services Plan to the Congress on September 1 We look forward to your response, and to a continuing dialog with you as we work toward meeting the Nation's ocean service needs

This concludes my statement I would be glad to answer any questions members of the Subcommittee may have

Ms MIKULSKI Thank you very much, Mr Winchester, for a thorough overview of the current status of the NOAA ocean service centers We look forward to receiving this plan on September 1

I have a few questions, and then I will yield to my committee members First, let me say this, I think the idea of exploring how the private sector can be involved in the delivery of marine services is certainly a worthwhile endeavor to pursue I have a couple of questions related to that, however

How would it work? Would the private sector come to you and bid? Would they pay for the right to do that? How will they get in on it? Will they come and take over, say, the Seattle center and then essentially rent it? Tell me how it would work

Mr WINCHESTER Thank you, Madam Chairwoman I will try to answer that in as much detail as possible I must start out by

saying, first, this is the main purpose of our four business meetings we are having, the first of which was yesterday, is to establish a dialog with the private sector, particularly the value added members of the private sector, to see what interest they have in pursuing a partnership arrangement with us and what they believe, the firms believe, they could take over and conduct as a viable business enterprise

The way we envision implementing it at this time, and of course the details are not completely worked out, is that we have already published a request for information in Commerce Business Daily on the 22d of July. It is a rather inclusive request asking for information on the private sector companies that would be interested in pursuing this concept with—

Ms MIKULSKI Mr Winchester, maybe I didn't clarify my question. What would the U.S. Government get from the private sector in order for the private sector to take products that were developed at the expense of taxpayers and, in turn, sell them? Will they pay the United States of America for the right to be able to make a buck off of what we developed with taxpayers' money?

Mr WINCHESTER What we plan to do is to charge the value added industries some kind of a fee for connecting into our electronic data link. We don't believe we can charge them for the data, per se, because it has already been paid for by the taxpayers.

Now, what would the Government get? The Government would get several things. The Government would get what we believe would be a better product and service provided to the general public and to the marine industry, because the private sector people are certainly capable of providing that service. Of course, as I mentioned in my statement, the Government would get something like \$5.5 million per year in cost avoidance by not having to pay Government employees to provide those services.

So, that is what they would get.

Ms MIKULSKI But, Mr Winchester, let's just say I am a company called the Maryland Marine Services, and we had an ocean service center in Maryland. I am going to deliver those services, and I am willing to take over the employees or bring in my own and do any of the requirements you set up. In order for me to have the right then to operate it, I don't pay you anything to be able to make money? You are just going to turn it over to me because I say I am going to be swell?

Mr WINCHESTER Well, we had not thought of trying to charge for the data because I—

Ms MIKULSKI I am not talking about charging for the data. I am talking about charging for the opportunity to make a profit off of what the U.S. Government developed at taxpayer expense.

Mr WINCHESTER We would expect to charge some kind of a fee for that, and the details of how much that fee would be have not been worked out, because it would cost the taxpayer some additional money to make this electronic data connection available to them at all these regional centers. So, there would be some charge against the value added companies for that, but again, the most important thing I believe will benefit the taxpayer is the savings of \$5.5 million a year and, I believe, a very much better product over a long period of time.

Ms MIKULSKI Yes, but we are going to get money because we eliminate Federal employees If I were going to open a Roy Rogers or a Wendy's or a Seven-11, I would have to pay for the right to be able to do that I think both you and I are very conscious of the impact that any proposal has on the Treasury First of all, if we don't work with the private sector, what would be the additional costs, and if we work with the private sector, what would be additional returns to the Treasury

There are two ways we can get money One is by user fees for the services procured, assuming there is also a value added That is one dimension The other is for the right to be able to operate those centers I think if we are going to be able to have the private sector and it is such a good idea, they should pay to be able to do that

Mr WINCHESTER I understand your point, and I have discussed this with our general counsel I guess the consensus seems to be that there is a legal question here of whether or not you can charge a corporation for data that has been acquired at taxpayers' expense if you don't charge everybody for it If you are not going to charge an individual, you may not charge a corporation

But may I make another couple of points? I would like to respond to what Congressman Miller—

Ms MIKULSKI You can respond to Congressman Miller on Congressman Miller's time I have just a few other questions He will get his time He has a center

Mr WINCHESTER I was hoping that would be relevant to answering your question, but—

Ms MIKULSKI Your last point is pertinent How can we charge user fees to obtain information that was already developed by taxpayer money? In other words, the public already paid to develop the information Why should the public pay once again to get the information?

Mr WINCHESTER Well, the information that we are going to provide to the value added companies isn't worth very much in its present form The value added companies are going to have to do some analysis and manipulation of the data to make it of value to the commercial and general user as a usable product If the value added company doesn't do it, the Government is going to have to do it with Government employees, and that is where the \$54 million comes in The value added companies would do that and write it off as a business instead of having it all done by the taxpayers

Now, I believe very strongly that over a longer period of time we will get a much better service because in future years we are going to have more and more oceanographic and meteorological data accumulated through satellites and all of our data acquisition systems Analyzing and using that data is going to be a tremendous job I don't quite see how the Federal Government is—

Ms MIKULSKI Excuse me, Mr Winchester, just to move on for my colleagues As you are trying to attract private sector interest here and all these value added products, do you intend to eliminate or restrict in any way the availability of marine products and services in order to make it profitable for the private sector to do business?

Mr WINCHESTER No, we do not It is not in our plan that we will eliminate any services being provided now or that we will eliminate any services for which there is a valid user need And if the private sector can't take those services and provide them as a viable business venture, the Federal Government will have to continue to provide some of those kinds of services That is why I keep referring to it as a public/private partnership arrangement

Ms MIKULSKI One of the rumors that we have heard about this program is that NOAA is considering giving subsidies to private companies to persuade them to operate regional centers Could we have a bit of rumor control and get your sense of that?

Mr WINCHESTER There is certainly no official statement out of anybody in NOAA that that is in our plan Categorically, it is certainly not in my plan, because I think that begins to become at odds with what we are trying to do We are not looking to contract with private industry to do this job We are trying to entice private industry to do it as a business venture, and we don't see why we have to subsidize industry to do it

Ms MIKULSKI I think I speak for myself and I think it would be the consensus of the committee that I don't think you save any money if you have to provide operating subsidies

Mr WINCHESTER I agree with you, Madam Chairwoman

Ms MIKULSKI I think this committee would be adamantly opposed to any operating subsidies

My last question before yielding to my committee is, as you are holding these four meetings with the business community, if you find there is not much interest in the private sector in operating ocean service centers, how will this affect NOAA's program to implement the National Ocean Service Program?

Mr WINCHESTER Well, as we hold these meetings and if we find there isn't enough interest to justify pursuing this concept, we will back off and go the way Congress has directed We will proceed with opening the ocean service centers, and they will be manned with Government employees if that is what we have to do We are trying to look for a more economical alternative

Ms MIKULSKI Thank you very much

Mr Shumway, do you have any questions?

Mr SHUMWAY Thank you, Madam Chairwoman I think in the interest of moving on with the hearing I will pass

Ms MIKULSKI Mr Lowry, also from the State of Washington who has a little bit of this—I don't want to call it pork barrel—but maybe fish barrel

Mr LOWRY Well, I am also on the budget conference committee, and I am glad to hear what Mr Winchester just said, if I understand the proposal and you know I don't We are probably not going to be contracting out, because we have found in the Budget Conference Committee that by far the fastest growing element of expense to the taxpayer and this Government is contracting out It has been growing at exponential rates It is the only thing growing exponentially outside of the Defense budget It has been growing exponentially and while we have been reducing Federal employees, we have by many times been increasing contracting out

When I first came, I was worried that we were going to be laying off Federal employees to make all kinds of great savings, and then

we were going to find that all this contracting out to private business in the last 5 years is a gigantic cost to Government

So, that is probably my only question How do we know that in this proposal, the same thing that has been happening in all other agencies, primarily in Defense, but all other agencies is a gigantic increase in the cost to Government

Incidentally, we don't have any personnel rules on this—there is no maximum salary of \$68,000 or whatever it is for Federal employees There is no cap They may make \$150,000 running the company Holding down or freezing increases in salaries or all those type of things don't exist when contracting out And contracting out is growing and growing and growing

So, how do we prevent that from happening in this proposal?

Mr WINCHESTER Congressman, I think you stated correctly in the beginning that we have no plans whatsoever to consider contracting this service to the private sector We are offering these certain functions to the private sector as a business enterprise and they, in turn, decide what they charge for it based upon the marketplace, based upon the clients that they have

Mr LOWRY And they will charge only their clients There won't be any way that NOAA or somebody somewhere pays—

Mr WINCHESTER No, we have made that quite clear Certainly, as long as I am trying to direct this program, I can assure you that I will stick to that premise

Mr LOWRY Thank you

Ms MIKULSKI Thank you, Mr Lowry

Mr Saxton?

Mr SAXTON Thank you, Madam Chairlady

I certainly applaud your effort, Mr Winchester, in finding ways to make Government operate not only more efficiently but perhaps at less cost Certainly, whatever as a member of this committee I can do to help you achieve that goal I would like to do

I do have one question I have a copy here of a summary of existing NOAA marine products and services which is provided by you It is dated today, I guess, or yesterday It does list a large number of informational types of services that NOAA provides, as you know Can you identify which of those services has economic value that might be in some way paid for by private industry?

Mr WINCHESTER I don't think I can go through the entire list that you have there Those are primarily data sources What I can identify to you are some possible products and services based upon the value added on that data base you have which we believe has an existing market or has a potential for a market

Certainly, for a number of years now, the value added industries have been providing essentially all the oceanographic and marine meteorological services and products to the marine industry, like the offshore industry, the transportation industry, the construction industry on a direct basis as a consultant/client We think that is certainly proper, because I myself do not believe that the Federal Government should be providing specialized services to Exxon, for example, and Exxon doesn't either, so that is why they are willing to pay for it

Now, we also believe that some of what we call routing coastal services, for example, routine meteorological forecasts for use by

recreational boaters, small fishing boats, surfers, and people like that who enjoy the recreation of the ocean, can be provided by the private sector, and I believe there is a market for that. You say, where is the market? The market is to sell the service to one of the commercial media, and the commercial media will advertise the service and disseminate it and then sell advertising spots to recover their costs. Right now, that kind of information is not acquired directly from contact with the Government. It is still primarily obtained through the commercial media in some way or other. So, I think there is a market which will let the Government get out of that particular business.

Others are coastal wave forecasts for offshore. I am talking about offshore, now, for general public. We think that ocean temperature forecasts for recreational boaters and people who use the near-shore area, fishermen, and so forth, can be provided by the private sector and the private sector can make a market from those services. We are coming out with some kind of a color instrumentation from satellites which may identify where good fishing might be. We think the private sector can do that and find a market. Marine climatological studies—we think the private sector can find a market for them. Hindcasting, which is an after-the-fact development of wave statistics for offshore industries, we think the private sector can do.

Those are just some of the ones that we think the private sector can do.

Mr SAXTON Just by way of wrapping up, can you indicate to us, perhaps as a percentage or a number, what percentage of this list you think has a market value?

Mr WINCHESTER I don't believe I can from that particular list you have, because as I say, I think that is primarily a data source list instead of a usable product list.

Mr SAXTON How would you find out? I think it is a great proposal, but if we don't—

Mr WINCHESTER This is again one of the things that we expect to come out of the series of meetings we are having. We are talking with the value-added industries to get their opinions on what they can market and what they can sell. But just for your information, about 50 percent of the requests that have come into the Seattle Center over the last year are for products in oceanography. That include such things as tides, beach conditions, waves, fishing conditions, and so forth.

Mr SAXTON Mr Winchester, one final question just so that I am sure I understand, you would have a data base, presumably a computerized data base of some kind that someone interested, a corporation or an individual, would pay a fee to hook into?

Mr WINCHESTER That is right.

Mr SAXTON And all of this information would be available to them for that fee.

Mr WINCHESTER That is right, and providing that data base would continue to be a Government responsibility.

Mr SAXTON Thank you.

Ms MIKULSKI Mr Studds.

Mr STUDDS Thank you, Madam Chairman.

Mr Winchester, I am always surprised to find you here, since you obviously don't believe that your agency ought to exist in the first place. I don't profess to understand any more than anyone else does here what it is you are about except that it sounds to me, to use one of those ghastly words in your testimony, that it is privatization of Government. To listen to you, one would think that there is nothing inherently governmental in anything your agency or any other agency of Government does and that it is a damn shame that we can't get private industry to take it all over. The Government is somewhat of a nuisance, sort of an anachronistic hangover. It is easy to denounce, costly, cumbersome, and just a general bother upon the public and it ought to be gotten rid of.

This administration appears to be filling said Government with people whose principal purpose it is to do precisely that. I don't know why we still have a Department of Education. We were promised we would get rid of that. I don't know why we have a Department of Energy. We were promised we were going to get rid of that.

It is quite clear that you would like to get rid of at least this segment of the Department of Commerce and, I assume, the rest of the Department which does nothing but meddle around in what private industry could clearly do better.

I would like to start with the more philosophical question of, is there anything in NOAA that you think is inherently governmental?

Mr WINCHESTER Well, thank you, Congressman. First of all, I must say I don't necessarily agree with your evaluation of my philosophy.

However, there are many things in NOAA that I think are inherently governmental. In this whole Ocean Services Program, I think in my oral statement here, I said that it was certainly inherently governmental to operate the data collection.

Mr STUDDS Why? Why couldn't private industry do that better? Why shouldn't they?

Mr WINCHESTER I don't think private industry can do that better.

Mr STUDDS How do you know? Why don't we have a conference?

Mr WINCHESTER Congressman, first of all, a data base, if it is going to be useful, has to be a data base that is a long-term data base. It has to be controlled. It has to be international. There is no way that you could expect to have consistent data that are consistent with data from the rest of the world if it were done by private companies. I think that obviously has to be done by the Federal Government, and we plan it would be done by the Federal Government.

The second thing in the Ocean Services Program that should be done by the Federal Government and plan that it be done by the Federal Government would be at the national centers. The national centers are the ones that prepare what we call guidance products. That means pressure maps and temperature maps and current maps and tidal charts and also global modeling for weather purposes. These are all things, again, that apply to our entire world, really, because it is all international. This is where we work with all the other countries, so as to have some consistency.

Those pieces of information, then, are passed to the regional centers under this concept which would be picked up by the value added industry, and they would tailor those products and specialize them for individual users, industrial users and some of the general public

Mr STUDDS Are you saying they are inherently governmental because the collection of this data is difficult and complex and international and global? Wasn't it your agency that wanted to sell the weather satellites?

Mr WINCHESTER Yes, I guess the administration proposed——

Mr STUDDS Those are sort of international and global, aren't they?

Mr WINCHESTER Yes, they are, but that was primarily selling the operation of them and certainly the Government would be a user of the data

Mr STUDDS One of the last times we saw you in here, you wanted to privatize the nautical charts; did you not?

Mr WINCHESTER No, sir

Mr STUDDS I could have sworn that is what we had our last encounter about

Mr WINCHESTER No, sir I have never talked about privatizing the nautical charts I have talked about certain functions and preparation of nautical charts that can be done by the private sector under contract with the Government under Government control That is part of the A-76 program

Mr STUDDS I don't understand This incredible syllabus of yours which we have copies of, contains a drawing of an ocean services machine—I love it

Mr WINCHESTER Yes, we had an artist do that

Mr STUDDS There is a machine here and something called a value-added industry I used to think that was a tax Apparently it is an industry It cranks it some more and out comes something called products advisory services and user coordination

Mr WINCHESTER That is right

Mr STUDDS We will leave to you the implicit assumption that the users are uncoordinated, but I don't understand for 1 minute what you said Let's take a small example A few moments ago, you said, I think in response to Mr Saxton, something about weather forecasts or advisories for small boat fishermen and coastal boaters of all kinds, and I believe you said, surfers—I have never seen a surfer listen to a weather forecast You thought that the issuance of these advisories was a perfectly appropriate thing for private industry to do Is that right?

Mr WINCHESTER Yes, sir, I do

Mr STUDDS What is it that you do of any consequence that you do that is inappropriate for private industry to do?

Mr WINCHESTER Well, in the Ocean Services Program, as I explained, being responsible for the collection and maintenance and quality control of the data base is

Mr STUDDS So, you do that, and the public pays for that, and then you give it to something called the value-added industry to sell it at a profit?

Mr WINCHESTER Yes, I guess you could say to sell it at a profit But what I am saying is——

Mr STUDDS Obviously, that is what they are in business for

Mr WINCHESTER Certainly, they are in business to make a profit or they wouldn't be in business But what I am saying, though, is we are not just giving that to private sector corporations to make a profit We are taking that burden off of the taxpayer to provide that product

Mr STUDDS You are taking off the taxpayer the burden of having free access to what he has already paid for That is the burden you are removing from the taxpayer

Mr WINCHESTER Well, the taxpayer is entitled to that data base, too, if he wants it

Mr STUDDS And pays for it a second time

Mr WINCHESTER If we are going to charge one customer for a data base, I think you will find that there is a lot of legal precedence that we have to charge all users and all requestors

Mr STUDDS Suppose private enterprise doesn't want to pick up some significant portion of your services Then what?

Mr WINCHESTER If private enterprise does not want to pick up some significant portion of our services and there is a real need for it, we will continue to do that within the Government That is why I keep referring to this as a Government/industry partnership

Mr STUDDS Are you suggesting there is a need for some of what you do and not for others?

Mr WINCHESTER I suspect that—well, I know that all the products and services that NOAA provides are not all of equal priority

Mr STUDDS Are they all needed?

Mr WINCHESTER I don't know whether I can answer that question in particular or not I guess it would be a hard question to answer because it would probably depend upon whom you ask

Mr STUDDS I thought I would ask you You are running the program

Mr WINCHESTER Well, I suspect there are some services that are not very valuable from an economic point of view

Mr STUDDS Shame on you How long have you been running them? Why aren't you up here telling us to discontinue them?

Mr WINCHESTER I guess some of those are relatively small compared to some of the big ones that take up more of our time

Mr STUDDS Well, I know my time has expired, but I must ask this question The original plan called for a center in Boston What happened to the one in Boston, not that we want one after this?

Ms MIKULSKI And Baltimore

Mr STUDDS Yes, and Baltimore, let me say—

Mr SAXTON There is one for Newark, NJ

Mr WINCHESTER Let me tell you where those came from They came from the report of managers of the 1985 appropriations conference We did not specify those other five centers I guess somebody asked me yesterday, did I think five more was enough? I suspect you could make justifiable arguments for having a center in Boston, particularly if you can tailor the products and services that the people on the coast need and figure out a way to do it economically I would be very much in favor of that

Mr STUDDS The folks in Boston have a unique way of dealing with items that they think have been unduly taxed, as you probably know

Mr WINCHESTER Yes, sir I am sure everybody feels they are unduly taxed, but we still have a tremendous budget deficit, so there is something wrong somewhere in the economics

Mr STUDDS I am sorry, Madam Chairman, for taking so much time

Ms MIKULSKI Mr Miller, you now have your own time

Mr MILLER Thank you, Madam Chairman

Ms MIKULSKI You also have your own center which the rest of the committee envies

Mr MILLER Well, Mr Winchester, since you were so eager to respond earlier to Madam Chairman, now is your chance What did you want to say in response to my opening statement?

Mr WINCHESTER In your opening statement, you said that you hoped that if any of these centers were operated by the private sector, that would increase other business in the private sector My answer to that was going to be yes, we think it will I think the reason for saying that is, as I briefly mentioned, over the next several years, we are going to have an exponentially increasing amount of data Somebody has to handle that data to make something out of it There are all kinds of things that people like myself who are in this business can see that would be useful for new products and services and to develop other industries

Mr MILLER Let me be very specific with your center at Sand Point If this program goes ahead, we hope that there will be fewer employees eventually and, therefore, a lower burden on the taxpayer Can we assume that the value added industries that are going to come and say we will do this or we will do that will be interested in locating where the center now is or very close to it?

Mr WINCHESTER My philosophy is that value added industry cannot very well provide this service unless they are located where the center is That is the purpose of the regional centers

Mr MILLER That is what I am getting at As Congressman Lowry who comes from an area very close to this center knows, we have Sand Point always on the list of possible closures It may be a good thing to close Sand Point The Navy moves out, NOAA is already there The question is, will there be possibilities of equivalent employment?

One possibility lies with NOAA Obviously, they are not going to be Government employees under this program So, the question I am getting at, are some of these value added industries likely candidates to want office space or facilities right there near the NOAA station, and you are saying yes

Mr WINCHESTER I am saying I am sure that they would want office space nearby I guess in concept, just as a planning figure at least, if the ocean service center at Seattle were to be operated or jointly operated by value added industry, we would expect about 10 Federal employees from the Federal side, but obviously that has to be supplemented by more than 10 from the private sector side to continue to provide the services

Mr MILLER Because they will be producing more services than you are now producing?

Mr WINCHESTER Yes, sir

Mr MILLER So, the theory is there will be more total employment

Mr WINCHESTER That is right Again, I repeat that I don't quite see how a value added company, say, in New York, could very well provide services out of Seattle as effectively as a company in Seattle can For your information, there are several good ones in the Seattle area that I am familiar with

Mr MILLER You have this conference going on this week here

Mr WINCHESTER Yes, sir

Mr MILLER At the end of that conference, I assume you are going to have more specifics on private companies that will be interested in taking on some of these opportunities and you will have a better idea of what companies might locate at a center?

Mr WINCHESTER Yes, sir, that is the purpose of these meetings Our September 1 report will identify all of those

Mr MILLER OK I would be interested, after your conference, if you could get back to us with more specifics on that, obviously, in my case, with regard to the Seattle center but in terms of the potential for this program in other cities as well

One more question Getting back to what Congressman Studds was referring to, as I understand it, NOAA will continue to provide to the public—excuse me—the value added company which takes on these opportunities will be required to provide to the public at no cost the general marine forecast Is that correct?

Mr WINCHESTER That is our tentative plan I keep talking about its being tentative, because it is supposed to come out of all these workshops

Mr MILLER So, the value added company, as I understand this proposal in its tentative form, is going to be providing to the public or corporations and charging for products that NOAA is not now providing primarily Is that the case?

Mr WINCHESTER No, NOAA is providing most of these services now Let me make one statement along those lines NOAA will not relinquish the responsibility for providing severe storm warnings and forecasts of events that threaten the safety of people and property We think that is, again, a Government function

Mr MILLER Well, then, do we have three categories of services here? Category 1 would be services these companies or NOAA would be providing free to the public Category 2 would be services that you provide that they will be taking over that they will be charging for, and category 3, which I thought was a big category, is where they take your data and they massage it and they do their marketing studies and they sell it in a form that hasn't been put on the market before Am I wrong in analyzing the three categories? Please correct me, if I am

Mr WINCHESTER I don't think you are basically wrong We may have a little semantics problem First of all, the value added companies now do and have been for a number of years, using NOAA data bases, to provide products and services to industry, tailored products, and services to industry An example is the offshore industry

Mr MILLER So, they are providing it in a form that NOAA doesn't provide it

Mr WINCHESTER That is right NOAA does not do that now and would not think about doing that because that is directly providing

service to a private corporation We don't think that is a function of Government

Now, what NOAA is doing, NOAA is providing the general day-to-day coastal forecasts, wave conditions, and temperature conditions We would like to see the private sector take that over, take it from NOAA, and figure out how to get paid for it We suggest that it is through sales to the media, because that is not completely contrary to what is being done right now

Mr MILLER Thank you, Madam Chairman

Ms MIKULSKI Thank you very much, Mr Winchester The committee, Mr Shumway, myself and others, will submit to you and your office some additional questions I would like to have a legal opinion on compliance with the A-76 process, and we will be talking with you about that Thank you very much for your testimony We look forward to seeing your September 1 plan

Mr WINCHESTER Thank you, Madam Chairwoman We will be very happy to respond to the questions you submit to us in writing, and we certainly want to work with you as we develop this plan

Ms MIKULSKI Fine The record will remain open until those answers are received

Now, the committee would like to call panel 2, both potential providers and actual users of these ocean service centers Dr Ken Ruggles, president of Global Weather Dynamics, and Mr Gordon Hall from the Lake Carriers' Association

Gentleman, would you step up to the witness table, please? Dr Ruggles, with Hurricane Bob now converted into a tropical storm but with weather warnings and alerts and so on having been very much in the public's mind, why don't we start with you and your experience and views on national ocean service centers

However, we welcome both of you and look forward to real private sector participation

#### **STATEMENT OF DR KENNETH W RUGGLES, PRESIDENT, GLOBAL WEATHER DYNAMICS, INC , MONTEREY, CA**

Dr RUGGLES Thank you very much, Madam Chairperson and members of the committee

I am president of Global Weather Dynamics, Inc We are a private weather and ocean services company supporting a client base with worldwide operations

I have tried to pose my comments by asking three questions First, can the private weather and ocean services industry provide quality support to end users? The second question I have asked is, will the private service company be motivated to provide such services? And then the third question is, should the Government step aside and let us provide quality support to end-users?

Private weather and ocean forecasting companies not only can but do provide quality weather and oceanographic services to support industry Presently, over one dozen US firms advertise in the Bulletin of the American Meteorological Society as specialists in ocean and marine support applications There are perhaps many more who do not advertise in this particular journal

Private weather and ocean services companies now support offshore oil and gas operators, shipping lines, construction companies,

and other firms who have need for specialized services to support and improve the safety and economy of their operations

The strength of a private sector company in providing these services derives from the fact that such companies are funded and operated using private capital. If a customer is willing to pay for specialized services, private companies can and do bring the best in technology to bear rapidly and effectively to support customer needs.

The private company is financially motivated to achieve customer satisfaction by providing quality support as an essential step to success in a highly competitive industry. If the private weather service company does not have special concern for its clients' needs, and if it does not exercise special care in responding to these needs, it will fail and there are other companies to fill this need.

The private weather and ocean services companies are staffed by top notch professionals who bring the latest in technology and the best in capability that science can offer to bear on customers' problems.

Given a continuation and growth of the past cooperation between industry and the National Oceanic and Atmospheric Administration, wherein the Government provides for ocean data collection and initial processing of these data at national centers and the private sector provides specialized ocean and weather products for specialized users, our Nation has the very best solution in meeting the public need.

Looking to the next question, will the private weather and ocean services companies provide quality support to end users?

The fact that we exist attests to the fact that private industry will support end user needs. However, the private sector must live within a set of economic rules. These rules require that a customer pay enough for goods and services to cover our costs to provide the services, pay our wages, and reward our investors for the use of their money in creating the capability to provide the services.

If the price represents fair value for services received, the customer will pay. If the customer will pay, companies like Global Weather Dynamics, Inc., can raise investment capital and hire quality staff. The result is a quality service sector within our nation meeting a public need with private funds.

Without a customer commitment to pay, however, the economics simply do not exist for private industry to support the public need, and there can be no effective private sector.

This brings us to the issue of marketing. Why would someone not want to pay a fair price for the services? Either the need for the service does not support the cost of the service, or the user can get it cheaper elsewhere. I submit that both forces are working in the Government and private sector marketplace interaction today.

Consider the case where there is a service even though the end-user benefit from the service does not justify its cost. One must then ask the question why the Government, or anybody else, is providing the service. The answer to this question is that without pricing policies built around costs, the Government does not have a way of truly measuring the value of the service and, therefore, its ultimate utility. Lacking a value measurement mechanism, well-in-

tioned programs may not provide value and may result in a clear waste of taxpayer money

The free marketplace is a very harsh but very good judge of service value. When the end user is required to pay for the service in a fair marketplace, either the mechanisms develop to compensate service providers for the service, or the service disappears as useless.

Another case is that where there is a clear need for service but the private sector cannot participate because the Government provides the service either free or for a fraction of its true cost. Under these conditions, the private sector suppliers cannot compete with the Government. The potential customers rightly perceive that the market value of the service is the Government price.

So, the issue of whether industry will provide quality service is really not an industry choice. Industry wants to provide quality services. Will the Government let our free market forces act so industry can provide these services?

The final question is, Should the Government step aside and let the private weather and ocean services industries support end users? My response is an unqualified yes.

The basic problem, however, is that for those marketplaces where private industry now can operate within the economics of private enterprise, it is already doing so. Because of my previously listed arguments, there simply isn't a viable marketplace today for a substantially expanded private sector participation. That is not to say that there may not be.

Therefore, it would be patently unrealistic for the Federal Government to abandon its existing end-user service base without a mechanism for reasonable marketplace adjustment to a commercially provided service. In considering options to make this happen, it certainly does not appear to be reasonable to expand the Government provision of free end-user services except on a limited experimental basis to bring new technologies to market.

It does appear reasonable for the Government to consider substantial price increases for end-user services phased in over time to a point where the Government end-user customizing costs are fully covered. If there are still people paying for a service when this happens, I believe private industry will figure out a way to beat the Government price and the market will automatically transition to the private sector.

Given intelligent cooperation between industry and Government, I believe there is a path into the future which will meet the service needs in oceanography for our Nation's users while keeping costs in line in the Government.

I will be happy to answer questions.

Ms. MIKULSKI: Thank you very much, Dr. Ruggles.

We are going to hear from Mr. Hall and then question the panel as a panel.

Mr. Hall, we welcome your testimony. I believe you are one of the users of NOAA's services.

**STATEMENT OF GORDON D HALL, VICE PRESIDENT, LAKE  
CARRIERS' ASSOCIATION, CLEVELAND, OH**

Mr HALL Good morning, Madam Chairman and committee members

I ask that my previously submitted written statement be entered in the record, and I would like to read a brief summary

Ms MIKULSKI Without objection, so ordered

Mr HALL Lake Carriers' Association is strongly supportive of the plan to establish an ocean service center for the Great Lakes. The Great Lakes mariner has the same urgent need for accurate weather information and forecasts as the ocean mariner, and we sometimes find that the required information on existing conditions and forecasts for storm passage is not available to the degree required. National Weather Service forecasters have to spread their expertise too thin among agricultural, highway, aviation, and marine interests with the result, at times, that the maritime customer is left with less than the product he requires to make essential decisions on whether or when to sail, what route to take, or whether he should seek shelter from a passing storm system.

A recent event will serve to illustrate the problems faced. Earlier this summer, deep draft shipping was halted for a time on the St. Mary's River between Lakes Superior and Huron in upper Michigan because a storm had caused water levels to rise so high that the passage of a ship in a near shore channel might exacerbate the flooding being experienced by shorefront property owners. When the National Weather Service was called for a projection on how long before the waters would recede, the meteorologist could afford little time to answer the query because he was extremely busy tracing a dangerous system spawning tornadoes across northern Ohio and southern Ontario.

The service center concept is seen as producing the expertise mariners require. After coming to a full understanding of the needs of the Great Lakes maritime community through improved communications based on feedforward and feedback, staff members at the service center will be able to give their undivided attention to the needs of shipping with regard to ice forecasts, water level fluctuations, and data on present and forecast weather on the lakes.

We believe that the conclusion reached by NOAA in 1981 that the service center should be in Cleveland was a sound and practical one based on good economics.

Our members do not believe that contracting with the private sector for their weather needs can be classed as an improvement, and at a time when Great Lakes shipping interests and the industries they serve are struggling for their very survival against foreign competition, they most assuredly do not need a proposal to increase their operating costs.

Lake Carriers' Association asks that this subcommittee direct NOAA to carry out the will of Congress expressed some years ago to set up a Great Lakes service center.

This concludes my summary statement.

[Prepared statement of Mr. Hall follows.]

PREPARED STATEMENT OF GORDON D HALL, VICE PRESIDENT/TREASURER, LAKE  
CARRIERS' ASSOCIATION

Lake Carriers' Association represents 15 United States-flag Great Lakes fleets. The 15 member fleets have a combined total of 98 vessels with a per-trip capacity of 2,414,827 gross tons of bulk cargo. These vessels comprise more than 95 percent of the tonnage of United States Great Lakes vessels and approximately 33 percent of all United States self-propelled vessels of 1,000 gross registered tons or larger engaged in the domestic trade.

In 1970, Congress passed a bill officially recognizing the Great Lakes as this nation's "Fourth Seacoast." Indeed the 95,000 square miles of water is a vast and usually beautiful area stretching over 1,200 miles inland from Montreal to the ports of Chicago and Duluth. However, due to the more shallow nature of the Lakes, the passage of weather systems affects these bodies of water more quickly and to a greater degree than the oceans. Passing summer squalls in Lake Erie can transform calm waters into eight-foot seas in minutes. Passing spring and fall storms can unleash ocean-like fury and result in 20 to 30-foot seas for prolonged times to any of the Lakes. In recent years, each Great Lake has experienced 35 to 45 gales and up to 13 storms per year. Half of these occur in the months of October, November, and December. So it is that the members of Lake Carriers' Association are vitally interested in the improved service to be derived from the establishment of an Ocean Service Center on the Great Lakes.

Great Lakes mariners are perhaps even more watchful and aware of weather conditions than those of us on land. There is no place to seek shelter in the middle of Lake Superior when an unexpected storm appears on the horizon. Not even the fastest ship can outrun a major storm. In those cases, the crew and vessel must face nature's onslaught alone. Of course, Great Lakes vessels are designed and built to withstand known weather extremes and veteran bulkers and tankers have navigated through literally thousands of storms and gales without sustaining serious damage, but good seamanship prompts masters to avoid heavy weather whenever possible.

Unfortunately, the present system of weather forecasting for the Great Lakes does not always provide masters with sufficient advance notice of heavy weather. Lakes weather forecasts originate from one of four National Weather Service Marine Weather Forecasting Centers. Weather forecasts for Lake Ontario are prepared in Buffalo, those for Lake Erie are prepared in Cleveland, Ann Arbor, Michigan, forecasts the Lake Huron weather, and forecasts for Lakes Superior and Michigan are prepared in Rosemont, Illinois (near Chicago).

The four-office structure hinders coordination of weather forecasts, but another equally serious problem exists. The meteorologists at these offices are also responsible for aviation, farm, and recreational boater weather forecast. The meteorologists' multiplicity of responsibilities demands that they can be generalists rather than specialists. Lakes weather forecasting requires

Despite the unquestioned dedication of these meteorologists, their division of duties and lack of focus on the marine environment can produce inaccurate or ill-timed weather reports. As a consequence, crews and vessels sail into unexpected heavy weather at times.

Given the severity of Lakes weather conditions, Lake Carriers' Association has sought the establishment of a centralized Great Lakes Weather Forecasting Center through the National Weather Service for several years. Such a center would be staffed with meteorologists solely responsible for Lakes weather reporting. The benefits would be far-ranging. The safety and efficiency of commercial vessel traffic would be increased.

First of all, masters would have sufficient notice of hazardous weather conditions and could steer clear rather than expose their crews and vessels to extreme weather. Additionally, valuable time and fuel could be saved by altering course to avoid fighting high winds and currents. Finally, our members' vessels and the National Weather Service already constitute a partnership as ships' officers take observations continuously and submit them to the forecast offices. With the advent of a central Service Center, these forecasts would be a prime source of data for the staff personnel to use in their forecast process. Personnel dedicated to the business of marine forecasting would develop a closer working relationship—that essential ingredient required in any successful venture.

A centralized Marine Weather Forecasting Center would also put the Great Lakes mariner on an even base with his ocean-going counterpart in terms of weather services. An Ocean Service Center is now operating in Seattle, Washington, with the responsibility of predicting weather and providing other National Oceanic and Atmos-

pheric Administration services to the marine industry on the West Coast. Additional Ocean Service Centers have been authorized for the East Coast, Gulf Coast, and Hawaii.

As this nation's "Fourth Seacoast," the Great Lakes deserve equal treatment. Mariners who have served on both the Lakes and oceans can attest that Lakes weather conditions rival those storms and gales encountered on the high seas. Furthermore, Great Lakes commerce is every bit as important to this nation as the ocean-going merchant marine and certainly merits the same consideration afforded the salt-water trades.

The Ocean Service Center for the Great Lakes will be organized to meet the most significant needs of our mariners—improved weather forecasts. The safety of both commercial and recreational navigation on the Great Lakes will be enhanced innumerable times.

At present, navigation interests receive broadcasts of current and forecast conditions which include information on wind, sea conditions, and visibility and observations made at various locations around the Lakes. Warnings of impending gales or storms are included. This information should continue to be provided.

Of most value to our members would be twice a day receipt of synoptic charts, one showing present conditions, one for 12 hours later, and one for 24 hours later. Included should be a projection of the paths weather systems are expected to follow and their speed of advance. From these depictions, mariners would be aware of storm cells moving toward the Lakes. If the storm was going to pass over or near the Lakes, broadcasts of storm progress every four hours would be desirable. Receipt of weather chartlets showing current wind speed and direction at all reporting stations would be very helpful.

Lake Carriers' Association believes that the establishment of an office on the Great Lakes, dedicated to meeting the needs of the mariner, would be an aid in ensuring that these needs are met. The staff of such an office would promote a better liaison with the maritime user by furthering communication between the producer and consumer of the maritime weather product. When serious storms track across the Great Lakes, a dedicated staff could give its attention specifically to the information so essential to shipping interests instead of having to satisfy the needs of farm, aviation, state highway, and shipping interests as is presently the case. A concise marine forecast would be available to the mariner during the 48 hours or so it takes a storm to cross the Great Lakes.

The major service our industry seeks from an Ocean Service Center is improved central weather forecasting. We don't care if it is called a Great Lakes Service Unit or an Ocean Service Center. Certainly services of such importance as ice forecasts and water level information could also be administered from a central location—but if we don't get the centralized weather service, we urge the Administration to not waste any money centralizing NOAA services of lesser year-round importance.

With most shipping concerns headquartered in Cleveland, Ohio, and as we are given to understand that the existing facilities of NOAA in Cleveland can accommodate the added staff and equipment, it would seem that Cleveland would be the most logical site for the function. John Byrne, NOAA Administrator, stated in 1981 that review of a number of options concluded that Cleveland was the best choice.

Liaison between weather officials and their customers would certainly not be fostered by a separation of several hundred miles. It should also be recognized that industry and the United States Coast Guard sponsor several meetings a year in Cleveland and expenses for NOAA attendees would be minimized if they were headquartered in Cleveland. Other than this important economic and practical view of where to establish the much needed function, Lake Carriers' Association has no view as to preferred location.

On the subject of "privatizing" operation of the Ocean Service Center Program, the Association members are opposed on two scores. Most important, the forecasting of weather requires all the technology which can be mustered, and even with the vast resources of the National Weather Service, the product is sometimes found wanting, through no fault of the professionals which staff the Forecast Offices. It is assuredly a complicated and, I assume, frustrating science. The federal government's one goal in making a change should be to provide a better service. Our members do not believe for an instant that privatizing the service will enhance that goal. Quite the contrary!

Secondly, the last thing American shipping interests need today is an "innovation" which will increase costs and further reduce the competitiveness of United States fleets vs. the fleets of foreign nations. This privatization is just another way of adding costs to the marine industry. We already pay enough taxes to get weather services.

A more expensive product of lesser quality certainly seems to be sufficient reason why the concept should be abandoned without further expenditure of federal funds. Another factor which should be considered is the international fleet of up to 75 vessels which may be on the Great Lakes at any one time. These vessels calling from countries all over the world are used to receiving weather information from government sources in their own countries. Would they have to contract on each trip into the Lakes for weather data from private sources? This would not seem to make Great Lakes trade more attractive to these foreign interests.

Additionally, there is a Canadian fleet on the Great Lakes which approximates in numbers that represented by Lake Carriers' Association.

NOAA, at the request of the Administration, has dragged their heels on the implementation of a Congressionally authorized Service Center on the Great Lakes. Now we hear a lot on the privatization of the Centers and meetings around the country to test this concept. We believe that this is another OMB effort to circumvent the will of Congress which has recognized the safety importance of Ocean Service Centers. We ask that this Committee tell NOAA to get on with the job—set up the centers—stop dragging your feet.

Thank you for the opportunity to express the views of our members.

Ms MIKULSKI Thank you very much, Mr Hall.

Moving right along to questions, first a few questions for Dr Ruggles and then for you, Mr Hall.

Dr Ruggles, your company gets marine information from NOAA, refines it, packages it, and sells it to special users. You add value to the information. My question to you is, No. 1, do you pay anything for the information you get from NOAA and, also, if you had to pay the real cost of generating that information, could you survive in your business?

Dr RUGGLES To answer the first question, yes, we do pay a fee to NOAA for the information we receive from NOAA. It is a fairly small fee. If we paid the full value for the cost, my company or any other company could not survive.

Ms MIKULSKI So, essentially, you pay a user fee but you don't pay the total.

Dr RUGGLES That is correct. If we had to pay the full cost, we would, in turn, have to pass that full cost onto our end-user clients. If our end-user client is, let's say, a Nation's shipping firm, they would have to pay that cost also. Our only value and our only profit in the operation is the value-added increment that we provide to the service.

Ms MIKULSKI That is an interesting concept. If you had to pay for the full cost, it would certainly add to the Federal Treasury, but as you pass that on to finally the end users, it would be inflationary, and therefore the impact on the economy would be negative.

Dr RUGGLES It is not an issue of inflation. I just don't think the customers could afford it. This gets down into the whole issue of why we have weather services and why we have private weather services.

Weather services, Government weather services, are proper. They provide for the general public safety and the general public need. However, there is a whole family of weather and ocean services which serve the economic need of specific individuals or specific industries, such as the shipping industry. These services provide value to those industries in meeting that economic need. We in the value-added industry provide our service by catering to that specific economic need of an industry segment, such as fishing, general shipping, offshore construction, and so forth.

Ms MIKULSKI You have testified that there isn't a viable marketplace today for substantially expanded private sector participation in providing these marine products Would your company have any interest in contracting with NOAA to operate an ocean service center or to market marine products that you do not currently provide customers and what would be the rationale?

Dr RUGGLES Yes, there are several points there One is contracting Of course, as a private company, we would be interested in contracting with anybody who found our services of value

On the issue of providing the services, to us it gets down to a simple matter of economics If there is somebody who is going to pay us for the services or if we can find a way to market the services so that we can pay for our costs of operation and still provide the services, we will do it

Ms MIKULSKI Thank you

Mr Hall, first of all, I think we all recognize that the Great Lakes is the fourth seacoast of the United States, and we thank you for sailing 15 cargo fleet ships under an American flag, a U.S.-flag fleet with U.S. mariners on it

Our questions are twofold What services do you receive from NOAA in terms of the conduct of your business and what do you think you need in terms of the delivery of your services? Would you be willing to pay for them or able to pay for them through the private sector? You have heard the testimony I am trying to get a picture of what you need, what you get from NOAA, what you get from NOAA that is free, and what you would go to the private sector for

Mr HALL One correction, Madam Chairman We have 15 member companies sailing roughly 60 vessels under the American flag

Ms MIKULSKI Oh, I am sorry I underestimated that I wish I could build 45 more ships for the American fleet just by correcting an error

Mr HALL We wish we had more ships sailing, too That was the case a number of years ago, and it has been on a steady decline

Currently, we get forecasts for routine weather We share the forecasts that come out for the recreational boater, anything that is provided for the agricultural interests, and we get storm warnings, advisories as gales and storms come near and pass through the Great Lakes We get a good product, but we think there is room for improvement in that product

As I pointed out, the meteorologists, capable as they are in providing that product, have so many masters to serve that we don't think they can analyze an approaching storm to the degree that we require We would like to see a synoptic chart made available twice a day that would show the approaching systems, their speed and direction of movement, and if there were a storm system of considerable consequence going to come near the lakes, we would like to see broadcasts on those kinds of experiences every 4 hours

We do not think, in the economic climate that we are in today, that there is any eagerness on the part of any of our members to pay for any service

Ms MIKULSKI That gives me a picture of it I would like to have my committee pursue some of these questions

Mr Shumway?

Mr SHUMWAY Thank you, Madam Chairman

Dr Ruggles, we have been here in the committee room during the prior testimony of Mr Winchester, and I think you heard him describe, as we did, the proposed partnership between the Federal Government and the private sector. As he described that partnership, I think he talked about data being gathered and made available by the Federal Government and then put in the hands of the private sector for massaging and then sale to the public.

After I heard your testimony, it sounds to me like that process is indeed going on. Do you share that conclusion? You apparently get data, massage it, and sell it to the public in the form of what you have referred to as specialized services.

Dr RUGGLES It has been going on for years. As I say, there is a very vital industry out there providing such services.

Mr SHUMWAY As you heard Mr Winchester testify, was there something in his testimony that indicated to you that perhaps there are some horizons that we have not yet met or some new opportunities that may be just around the corner?

Dr RUGGLES I really don't know how to answer. That is speculative. Let me come at it a little differently.

I think the real issue is that the Ocean Service Centers represent a new thrust for Government. The intent of an Ocean Service Center is very good, the idea of trying to improve our country economically and improve the safety of our people who have to work on the sea or around the sea, is very good.

I think the debate, from my point of view, focuses around the issue what is the role of an Ocean Service Center. I would make the point that if an Ocean Service Center exists to better the economic capability of selected segments of our society rather than the society at large, I would question why it should exist at all, because this is indeed the role that private industry has filled.

Mr SHUMWAY All right. I wanted to ask specifically about Ocean Service Centers, and I think you have answered part of my question. But I notice in your testimony you have a statement that says, "given the past cooperation between industry and NOAA wherein the Government provides for ocean data collection and initial processing of these data and the private sector provides specialized ocean and weather products for specialized users, our nation has the very best solution in meeting public need."

Having said that, if indeed we have that very best solution, why do we need Ocean Service Centers to provide for the public need if we already have it?

Dr RUGGLES That is fundamentally the question I would raise. I would have to agree with Mr Hall here to the degree that there is a need for our country and our government to provide warnings and public safety information to meet the general public need. However, I would make the point that when it comes to figuring out the most economically efficient way to route the ships that Mr Hall represents or the most cost-effective way to run that entire industry, I believe that is in the domain of the private sector, and I think we can fill that need admirably.

Mr SHUMWAY Mr Winchester said, I guess, that there are two objectives in setting up Ocean Service Centers, to provide weather

forecasts and warning services to the public and then to improve delivery of ocean information products and services Do you believe those objectives could be met through the private sector?

Dr RUGGLES The issue of the safety of the general public is a public charge of our Government The issue of delivering services and supporting individuals who have individual needs, I believe, can be better met by the private sector

There are many ways In fact, I attended a conference up at the opening of the Seattle center I recall a comment being made at the time where there was a disparaging remark made about the fact that there is some private individual who is printing up little tide tables that he sells for a nickel to fishermen This one person was making the statement, good heavens, why should we as taxpayers have to pay this guy a nickel for these little tide tables that he is passing out Why not have the Federal Government do it? My God, that guy with his little nickel tables that he was selling for public relations or PR was saving the Government, in my view, quite a bit of money That is what the private sector should have been doing

Mr SHUMWAY Mr Hall, in your testimony, you gave the example about the problem on the St Mary's River and the fact that you were unable to get the kind of advice you wanted there because there was a tornado moving elsewhere across the country Wouldn't that scenario always be applicable?

In other words, it seems to me that any kind of ocean data source is always going to be subject to being called to divert its attention elsewhere to give its resources and energies elsewhere if there is a storm or a particular emergency elsewhere In that kind of case, unless you just have a whole plethora of people standing by ready to give you advice on the St Mary's River even at a time when there might be an emergency elsewhere, I don't know how we are going to avoid that

It particularly strikes me that we are not going to avoid that kind of problem just by Ocean Service Centers per se Granted, they do provide storm warnings They provide a means of better delivering services, but I am not sure that I see a cause and effect relationship between your problem and what we have discussed as Ocean Service Centers in meeting that problem

Mr HALL Our understanding, which may or may not be correct and in all likelihood is partially correct, of the Ocean Service Center is that it would be a group of experts, and I am not sure of the size of the staff, who would devote their attention to nautical matters Tornadoes moving through one or another corner of the Great Lakes or other regions of the country would continue to be handled by the local weather forecast offices that we know today

The Ocean Service Center would take care of a storm that had particular significance to maritime interests and track it and keep the mariner informed of the likely consequences and path and severity of this storm For things that had more consequence for the landlubbers, if you will, those would continue to be handled by the local forecast offices

Mr SHUMWAY When there is not a storm, though, facing mariners, those who are standing by ready to give that information, do they have any other function to perform? In other words, I am

wondering if there really is an on-going function for them outside of the storm warning context that is important to you

Mr HALL I think very definitely that there are times they are going to be busier than others, and I can speak better for the Great Lakes than I can for other areas Every area has its own peculiarities In the winter, we have ice conditions that they can turn their attention to In the summer when, normally, the kinds of storms that come through are not a hazard to our member companies and their large vessels, afternoon squalls come up across Lake Erie and the other Lakes which have a good deal of consequence and should be handled from the ocean center concept instead of from a local area because it may have started in Lake Michigan, but it is going to come across southern Michigan and then it will be of consequence 4 to 6 hours later in the western waters of Lake Erie

Admittedly, these folks would be busier at times than others, but I think there is some meat in the nautical sense that they can give and a service they can perform

Mr SHUMWAY So, you are looking for that specialized kind of service that Dr Ruggles speaks about, but because of the fact that you already have your backs to the wall, you don't want to pay any increased cost for it as Dr Ruggles would necessarily have to require if he were providing it

Mr HALL I think that is a correct perception

Mr SHUMWAY Thank you

Thank you, Madam Chairman

Ms MIKULSKI Thank you for thorough questions

Mr Hughes, do you have any questions in this area?

Mr HUGHES Thank you, Madam Chairman

I want to welcome the panel I just have one question of Dr Ruggles

I gather from your testimony, Dr Ruggles, you believe that the answer is to let the private sector do it, that they are capable of doing it, that it would be unrealistic for us to cease providing that service until we have increased the user fees so that it would be a smooth transition Is that basically your position?

Dr RUGGLES That is one way of stating it Basically, those of us in the private sector are driven by the economics of the marketplace If there is a marketplace there, we can provide a service The issue is, how do you create that marketplace?

There are several ways of creating it One is for the Government to provide user fees for the specialized services that it provides to meet its customers The other way is to just back out of the marketplace and leave the existing customer base high and dry and I don't think that is very realistic

Mr HUGHES So, the answer is to increase the cost of that service so it is more comparable with the cost of providing the service so that the private sector can compete effectively

Dr RUGGLES Yes, direct user fees for specialized services

Mr HUGHES Thank you

Ms MIKULSKI Thank you, Congressman Hughes

Mr Miller?

Mr MILLER Thank you

Listening to this discussion, I get the impression Dr Ruggles sees this marketing opportunity and sees the selling of services and Mr

Hall, the potential customer, doesn't see himself or his company buying the services

Dr RUGGLES Well, of course, that was the point I was trying to make in my testimony Mr Hall is used to receiving his services for nothing So, the value of the service in the marketplace today is nothing Mr Hall has a reasonable perception which, from an economic point of view, makes a great deal of sense My gosh, if I don't have to pay for it, why should I pay for it?

The position that I come from is that that the service has value and that it has substantial value If it is to be provided, Mr Hall should pay for the service If he doesn't pay for the service, then perhaps the service shouldn't be provided at all

Mr MILLER Ultimately, you are suggesting that maybe Mr Hall will find that he has more need than he thought and will pay for it or else he won't pay for it, in which case, you won't provide it

Dr RUGGLES That is exactly right

Mr MILLER And you will have to find other customers

Dr RUGGLES That is exactly right, or I won't find any customers and the service will not be provided at all

Mr MILLER Yes, Mr Hall?

Mr HALL We think we do indeed pay for the service today as taxpayers The member companies all pay taxes, and the employees that they have on board their vessels all pay taxes, and we think we are paying for the service

Mr MILLER OK Do you, Dr Ruggles, concur with Mr Winchester's conclusions that, one, if we go ahead with this type of plan, the net addition of employees in the private sector is likely to exceed the reduction of employees in the Government sector and, two, that those private employment opportunities will be located as near as possible to these ocean centers?

Dr RUGGLES I don't think I could support or agree with that view particularly

Mr MILLER Why not?

Dr RUGGLES No 1, the premise of private industry is that in a competitive environment, we can find a better and cheaper way to do a job When we take on that premise and if you believe in that premise, as I do, then the consequence of that premise is I am going to find a better, cheaper way to do it, which means fewer people, lower costs—

Mr MILLER But aren't you going to find, under this system, if you were producing the exact same services—you are saying you would do it with fewer employees and I understand that—but the premise here is that companies such as yours and other companies will, through their marketing, come up with services through tailoring this data base that—

Dr RUGGLES Create new markets?

Mr MILLER Yes, and therefore there will be a net gain in employment

Dr RUGGLES That indeed would be a hope, and I would hope that would happen However, to sit before you, Mr Miller, and state that with conviction I would have a hard time doing

Mr MILLER Yes, the last question, do you agree with Mr Winchester that if a value-added company gets involved here that be-

cause of the service that they are going to want to locate as close to the service center as possible?

Dr RUGGLES I can't agree with that at all I think I would rather locate as close to the customer as possible, whoever that customer may be If the customer is near your service center, Mr Miller, I would like to be there, but it is where the customer is

Mr MILLER OK Of potential customers, are universities potential customers?

Dr RUGGLES No, universities are more in the R&D side of the business and, characteristically, I end up being a customer of a university

Mr MILLER OK Thank you

Thank you, Madam Chairman

Ms MIKULSKI Thank you very much, Mr Miller

We would like to thank the panel for their testimony and insights as we proceed in these deliberations

This adjourns this particular oversight meeting of the committee However, the record will remain open for additional questions

The committee is adjourned

[Whereupon, at 11 19 a m , the subcommittee recessed, to reconvene subject to the call of the Chair ]



# **ABANDONED SHIPWRECK ACT**

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**TUESDAY, OCTOBER 29, 1985**

**HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON OCEANOGRAPHY,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC***

The subcommittee met, pursuant to call, at 10 a m , in room 1334, Longworth House Office Building, Hon Barbara A Mikulski (chairwoman of the subcommittee) presiding

Present Representatives Foglietta, Hughes, Ortiz, Shumway, Saxton, and Bennett

Ms MIKULSKI Good morning, everyone In the interest of time, if everyone could take their seats, it would be most appreciated

The committee will be formally convening in a few seconds, and we wish to move as expeditiously as we can, as we must vacate this room no later than 1 o'clock for another hearing

**OPENING STATEMENT OF HON. BARBARA A MIKULSKI, A U.S. REPRESENTATIVE FROM THE STATE OF MARYLAND, AND CHAIRWOMAN, SUBCOMMITTEE ON OCEANOGRAPHY**

Ms MIKULSKI The Subcommittee on Oceanography now is in formal session to consider H R 3558, the Abandoned Shipwreck Act I would also like to welcome my colleagues today, and particularly to welcome the members of the full committee, and Mr Bennett, who is the bill's sponsor

We are in an exciting new era for exploring the oceans In fact there are those who say that it is the oceans that are our fourth planet, or another additional planet New technology developed for scientific activities is now also being used to locate and remove treasures long buried under water Current law affecting these activities is admiralty law which allows salvors to keep what they find from shipwrecks

Today, however, people are asking is it appropriate and are voicing concern whether historic shipwrecks need to be treated in a different manner Today, this hearing will look at how the entrepreneurial activities of treasure hunters, using new technology, can be reconciled with preserving and protecting our historical heritage

In the last decade, we have seen the birth and development of many new technologies We now have manned and unmanned submarines which can take us to the bottom of the oceans We have equally impressive sonar, which can draw pictures of what is on the ocean bottom, and we have diving equipment which gives divers freedom to explore the ocean's treasures

Surely, we have shown that you cannot only buy American, you can build America, and these new technologies have shown new possibilities for new jobs in our society

However, this technology which has led to new entrepreneurial activities, leads us to new issues. The number of shipwrecks we find each year is increasing dramatically, and attracting more treasure seekers. Herein, however, lies a dilemma between an archaeological tradition, and the entrepreneurial tradition.

We need to ask, do these belong to the common heritage of mankind, or is it simply a matter of finders keepers, losers weepers. Historic sites on land, such as the great pyramids in Egypt, are preserved for study and the enjoyment and education of future generations. One of the questions before us today is whether we should provide the same protection to underwater archaeological discoveries.

This new technology is dazzling, and I am glad that we have invented it here in America, and also in cooperation with our foreign allies. We welcome the dilemma that faces us. We know we have entered into a new era of exploration which causes us to ask what kind of law do we need for a framework for the future.

We believe we need a contemporary legal structure for a contemporary society based on new technology. We are here today to address this dilemma. Should we continue the present finders keepers tradition, or should we take some steps to protect historically important sites? Is the present law working or not?

We will hear testimony from witnesses with differing views based on their own experiences, and I look forward to a spirited discussion on this issue. The legislation we are considering today does that. It removes certain shipwrecks from admiralty jurisdiction, and gives the States jurisdiction over them. The shipwrecks affected by the bill would be those in State waters, generally within 3 miles of coastal land, which are buried on the bottom, in coral, or are listed or eligible for listing on the national historic register of historic places.

As we proceed, I know that this subcommittee is going to welcome men and women of science, people who have shown that they can combine the scientific tradition with the entrepreneurial tradition. Today, we are essentially hearing about two separate paths of the American way. I know that this subcommittee would like to thank you for the marvelous work you have already done and look forward to the guidance that you can provide us in creating an appropriate framework for the future on this issue of law.

[The prepared statement of Ms. Mikulski follows.]

PREPARED STATEMENT OF HON. BARBARA MIKULSKI, CHAIRWOMAN, SUBCOMMITTEE ON OCEANOGRAPHY

I would like to welcome my colleagues of the Oceanography Subcommittee to today's hearings on H.R. 3558, the Abandoned Shipwreck Act. I would also like to welcome members of our full committee, Congressman Bennett, who is the bill's sponsor in the House, and Congressman Ortiz.

We are in an exciting new era for exploring the oceans. New technology developed for scientific activities is now also being used to locate and remove treasures long buried under water. Current law affecting these activities is admiralty law which allows salvors to keep what they find from ship wrecks. Today, however, people are questioning this practice and voicing concern that historic shipwrecks need to be treated in a different manner.

The legislation we are considering today does that. It removes certain shipwrecks from admiralty jurisdiction and gives the States jurisdiction over them. The shipwrecks affected by this bill would be those in State waters (generally within three miles of coastal land) and which are substantially buried in the bottom, or in coral, or listed or eligible for listing in the national register of historic places.

This hearing today will look at how the entrepreneurial activities of treasure salvors, using new technology, can be reconciled with preserving and protecting our historical heritage.

In the last decade, we have seen the birth and development of many new technologies. We now have manned and unmanned submarines which can take us to the bottom of the oceans. We have equally impressive sonar, which can draw pictures of what's on the ocean bottom. And we have diving equipment which gives divers freedom to explore the oceans' treasures.

This new technology had led to new entrepreneurial activities and new types of science. The number of shipwrecks we find each year is increasing dramatically and attracting more treasure seekers. Herein lies the dilemma between archeological tradition and the entrepreneurial tradition.

Historic sites on land, such as the great pyramids of Egypt, are preserved for study and the enjoyment and education of future generations. One of the questions before us today is whether we can provide, and whether we should provide, the same protection to undersea antiquities.

The dazzling nature of our new technology used for finding shipwrecks presents us with equally dazzling dilemmas. We have entered into a new era of exploration which raises the question of whether our law is as contemporary as the technology we are using.

We are here today to address this dilemma. Should we continue the present "finders-keepers" tradition, or should we take some steps to protect historically important sites? Is present law working, or not? We will hear testimony from witnesses with conflicting views based on their own experiences with shipwrecks. I look forward to a spirited discussion on the issue.

At this time, I would like to ask Mr. Shumway if he has any opening remarks.

**Ms. MIKULSKI:** The committee would now turn to Mr. Shumway, the ranking minority member, to see if he has an opening statement.

#### **OPENING STATEMENT OF HON. NORMAN D. SHUMWAY, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA**

**Mr. SHUMWAY:** Thank you, Madam Chairman.

I would like to join with you in welcoming all of the witnesses who have been scheduled to testify before this hearing this morning, and commend you for your interest in this subject, and holding this hearing to find out some answers to questions that we have.

This morning we are considering a bill which is designed to protect abandoned historic shipwrecks so that their archaeological, cultural and historic significance can be preserved for generations to come. While this is certainly a worthwhile objective, and the authors of the bill are to be commended for their efforts, I think it is imperative that this subcommittee make certain that enactment of shipwreck legislation will achieve this desired objective in a reasonable manner without preference to any particular interest group.

I am concerned, Madam Chairman, that enactment of H.R. 3558 as presently drafted may indeed raise more legal and policy questions than it solves. For example, the three criteria laid out in the bill as to which shipwrecks qualify for State jurisdiction seem to me to invite considerable question and may well lead to a great deal of litigation and unanswered questions in the future.

Furthermore, if we are truly concerned with the protection of historic shipwrecks, what assurance do we have by giving States legal carte blanche that they will regulate in a more balanced

manner or even in the best interests of the shipwrecks. As well, I question, why do we necessarily need to give States title to these historic shipwrecks to insure their protection?

Perhaps of greatest concern to me, Madam Chairman, is that enactment of H R 3558 may actually prove to be a disincentive for divers and salvors to explore and find new discoveries of shipwrecks if their fear is that heavy State regulations and ownership will prevent them from recovering their find. There has to be some degree of incentive preserved for this kind of activity. If indeed States exercise that kind of role, how then will archaeological interests be served if shipwrecks, in the name of archaeology, are left undiscovered or unexplorable by the general public?

While in my mind this bill, as presently drafted, may have these certain problems, I remain open-minded toward the need for legislation. I don't believe that the concerns of the archaeological community, the sport divers and the salvors are necessarily unreconcilable or even mutually exclusive. Perhaps an amendment to Title 46 of the United States Code which deals with maritime law might be appropriate to spell out proper and archaeologically acceptable salvaging guidelines. This would insure private salvaging rights under admiralty law, and still preserve the historic and cultural integrity of valuable shipwrecks. In any case, Madam Chairman, I look forward to this morning's hearing, and I again welcome our witnesses. Thank you.

Ms MIKULSKI Thank you, very much. I think your testimony even more precisely lays out some of the legal concerns that we have. The chair would like to recognize for an opening statement the gentleman from Texas, Mr Ortiz, who we know also has a great deal of interest in this bill.

Mr Ortiz

#### OPENING STATEMENT OF HON SOLOMON P ORTIZ, A U S REPRESENTATIVE FROM THE STATE OF TEXAS

Mr ORTIZ Thank you, Madam Chairwoman. It is my pleasure to take this opportunity to produce at this point in the record the testimony of House majority leader Jim Wright, who had planned to be here this morning to speak on behalf of this bill, which many of us in Texas, members of the Texas delegation, are supporting.

I also like to present this other statement in support of H R 3558 from Texas State officials, including Gov Mark White. You will be hearing from two witnesses from Texas, and we are very proud that they are with us today, and they do have very impressive credentials. They are Dr George Bass, director of the Institute of Nautical Archaeology at Texas A&M University, an institution which has a worldwide representation in its field, and Dr Fred Wendorf, chairman of the Texas Antiquities Committee and the Henderson-Morrison, professor of pre-history at South Methodist University.

I am also happy to welcome the other witnesses in the different panels that will be testifying this morning. Madam Chairman, thank you very much.

Ms MIKULSKI Thank you, and with unanimous consent, the testimony of Congressman Wright is entered into the record. Hearing no objection, it is so ordered.

[The statement of Mr Wright follows ]

STATEMENT OF MAJORITY LEADER JIM WRIGHT, A U S REPRESENTATIVE FROM THE  
STATE OF TEXAS

Madam Chairwoman First, let me congratulate the Subcommittee on Oceanography for its efforts on behalf of H R 3558, the Abandoned Shipwreck Act This new bill incorporates some important principles concerning our nation's "drowned" cultural heritage with which I am happy to associate myself as a co-sponsor The state of Texas has also gone strongly on the record in support of the bill, both individually and as a member of the Coastal States Organization, which has passed a resolution supporting historic shipwreck preservation legislation

Second, let me state how essential this bill is and how simple its purpose New technology such as magnetometers and sonar beams have almost overnight opened up to recovery many more historically important shipwrecks than has ever been possible before Questions of salvage, ownership, use, and preservation are being raised in the federal courts, many of which have upheld the validity of state control, while others have upheld the "finders keepers" tradition of admiralty law Thus, there is a need to establish a clear federal policy on historic shipwrecks which can be followed by both the states and the courts

At the heart of the provisions of this bill is our nation's responsibility toward its cultural heritage Twenty-six states already have laws on their books concerning historic shipwrecks Congress historically has consistently reaffirmed support for laws preserving our nation's historic resources at the federal level That has been public policy since the days of Thomas Jefferson, who not only authored the Declaration of Independence, but was also our country's first scientific archaeological excavator Jefferson and the many who followed him, have taught us much about the importance of preserving scientific records of the past so as to better understand the present and to gain foresight into the future Congress has been guided by these principles in the establishment of many laws, including the Antiquities Act of 1906, the Historic Sites and Buildings Act of 1935, the National Historic Preservation Act of 1966, the 1976 amendments to the National Historic Preservation Act, and the Archaeological Resources Protection Act of 1979, to name only a few

H R 3558 affirms to the states the right to deal with historic shipwrecks within the boundaries of each state It would give to the Department of the Interior the right to deal with historic shipwrecks on federal land At the state level, each state would function as a multiple use manager among the many who are affected by state laws on shipwrecks, such as salvors, treasure hunters, preservations, archeologists, divers, and the general public The rights of each would be respected, but no one group would have absolute rights over all other groups on every occasion Because circumstances will differ from state to state, and among different shipwrecks, the bill leaves to each state legislature the right to make such laws and regulations as fit its own needs for the historic shipwrecks found under its navigable streams and rivers and streambeds The bill defines as historic shipwrecks those which meet the age requirements of eligibility for the National Register of Historic Places The decision on any ship's qualification would be made through each state's historic preservation office Texas, for example, has some 1,700 known shipwrecks of various historic periods, of which 653 have been designated as historic landmarks

The bill does not include shipwrecks located in international waters, on the continental shelf, or in U S territorial waters, of which the recently discovered Nuestra Señora de Atocha and the Titanic are two prominent examples

Ms MIKULSKI The Chair now wishes to recognize the author and sponsor of H R 3558, the distinguished gentleman from California, Mr Charles Bennett

Mr BENNETT From Florida

Ms MIKULSKI From Florida You know when you get so far out in space or underwater, it all starts to look alike

Mr SHUMWAY I would like to claim him from California, Madam Chairman

Mr BENNETT We are sister States

Ms MIKULSKI We would like to recognize you for your work on trying to draft a bill, and we look forward now to your testimony

on this bill, and would then like to, as a member of the full committee, ask you to join with us in its deliberations

**OPENING STATEMENT OF HON CHARLES E BENNETT, A US REPRESENTATIVE FROM THE STATE OF FLORIDA**

Mr BENNETT Thank you very much Like most Americans, I am sincerely interested in and dedicated to the preservation of historic things which deal with our past history At the present moment in Massachusetts they are discovering the remains of the 1630 Charlestown settlement, and that is largely because of legislation, as I understand it, which Senator Moss and I introduced, Congress passed, but we drafted 10 or 15 years ago

The majority of the philanthropic things that I have done in my life other than church have gone to historic preservation My office in Jacksonville is in a historic and preserved building, so I have very keen interest in the subject matters we are going to discuss today

I thank you, Madam Chairman, and the committee, for this opportunity to speak in behalf of H R 3556, to establish the title for States in certain abandoned shipwrecks and for other purposes We have all probably heard and read of some treasure salvor locating a historic ship The interest is great "How wonderful," we say to ourselves Just think of the knowledge that can be gained Another piece of history that will tell us of the rich past—opening doors to a long glimpse back into history But nothing in present law generates that

No one except the treasure salvagers will necessarily gain as things now are You see in the eyes of many salvage operations, the shipwreck site may become a shambles, wrecked again, if you will

This is why I submit this piece of legislation, along with others—Jim Wright and others that have introduced this legislation in past sessions and in this session, not to disparage all salvors They are not all looters I am sure many of them are not, and perhaps none of them are

This legislation substitutes for archaic salvage law—which optimizes taking all artifacts from the sea in exchange for financial reward—and puts in place of that legislation a law which will preserve historic wrecks and their contents for their historic values as well as allowing for financial rewards in carefully handled recoveries under State regulations

A moment ago, there was mention of the fact that it was thought maybe the States might not be the organization to do this My original bill provided for the Federal Government to do that, and it was this committee which changed that point of view It is also this committee which changed my point of view that all lands, even the outer continental shelf, should be involved So this bill is already a compromise It is a compromise as a result of this committee deciding that it should be more limited, and so it is a more limited bill I prefer my original bill and still do It is only here in the form it is here now because of the fact that this committee decided in its best judgment it was better to have a more limited bill last year

Eliminating salvage laws and utilizing a preservation law approach is one half of this bill. The other half is the assertion of ownership in State governments so that they do not have to go "hat in hand" to those who excavate the historic shipwrecks.

This bill has for its basic purpose the protection and proper utilization of historic shipwrecks and their environments and contents. This is achieved first by assertion of title in abandoned historic shipwrecks for the United States and the transferring of such title to the State in which the submerged lands containing the shipwrecks are located. This is needed as a result of Federal Admiralty Court decisions that gutted States' antiquities laws; these gutted laws provided for State ownership of offshore historic shipwrecks and set stringent standards for excavation and data recording. These measures were enforced by onsite archaeologists, particularly in Texas where this was able to be done.

With the admiralty court decisions, salvagers are now effectively on their own—to do just as they wish, with only their consciences or pocketbooks to lead them. While court decisions currently deny title of abandoned shipwrecks to the States, they clearly state that the United States, may legally assert title and also transfer it to the States. This legislation does precisely that in Section 6(B). This is a short bill. It is a very simple bill, actually, and 6 and 6(b) provides for that.

The legislation in section 4 recites the policy of Congress that the States will carry out their responsibilities under this law by (1) protecting natural resources and the natural habitats of the areas, (2) guaranteeing recreational exploration of shipwreck sites and, (3) allowing for appropriate public and private sector recovery of shipwrecks, while at the same time protecting as much as possible the historical values and environmental values, and the environmental integrity of the shipwrecks and their sites.

Under these provisions I would hope that some States will actually set aside underwater State parks for sport divers to enjoy in future generations in specifically designated shipwrecks. If this is not done, there will be little for future generations of divers to enjoy, if anything at all.

In the past, critics of this legislation have maintained, among other things, that this goes against the idea of free enterprise—something near to the hearts of all American citizens, including myself. However, as you will see, the scope of this bill is quite limited. It applies only to vessels listed in the National Register of Historic Places or embedded in the ocean floor or coral formations, and therefore quite old, in State waters.

As an example of this, I submit to you that in the case of Mr. Mel Fisher, who has had such dramatic success with finds of the 17th century galleon *Nuestra Senora de Atocha*, his achievements would not be affected by this bill because of the decision last year by this committee to limit coverage to State waters. This is so because the *Atocha* is not in State waters.

Under section 5 of this Act, the U.S. Advisory Committee on Historic Preservation, in consultation with appropriate public and private sector interests—including archaeologists, salvors, sport divers, etc.—are to publish advisory guidelines for protection of shipwrecks and their environments. Such guidelines are to assist

the State and the United States in developing legislation and regulations to carry out the policies of this act as outlined in section 4

Besides putting title in the States so that preservation purposes can be achieved, the bill specifically provides that historic shipwrecks shall not fall under the law of salvage. This is very important. This is necessary because salvage law is not preservation oriented at all, and such law has been held by some courts to apply to historic shipwrecks—just as in the case of modern wrecks. Florida's Department of State, working in support of this legislation, said

These courts have said, in essence, that historic wrecks are owned by no one and that any commercial sailor who can raise shipwreck material can have claim to it. There is no provision in admiralty law to require that professional archaeological methods be followed by these salvagers despite the historic importance of such sites

The Florida secretary of state went on to say that admiralty law would even permit unnecessary damage to underwater natural resources and that under the present State of the law no State can truly control its own submerged sovereignty lands. And that's what we are talking about, States' rights, not about detracting from free enterprise or the right of the entrepreneur

We know that people such as Mel Fisher capture the Nation's imagination. Imagine actually finding a ship from the 17th century. But once that fascination is gone, what is left? If the answer to this question is only a ransacked piece of junk and expanded bill-folds, the answer is wrong. Ms. Chairman, this is a simple bill, a great improvement over the more complex legislation I introduced on this subject years ago and which, understandably, unduly alarmed many divergent interests

Consider the words uttered by Dr. W. A. Cockrell, former head of Florida's Underwater Archaeology Program, (quoted in the March 18, 1985, issue of Newsweek) "In this decade, you are going to see the destruction of all shipwrecks in the State's waters." Shocking words. If we don't protect important artifacts, how will future generations partake of their rich past?

I believe all reasonable people will approve this legislation, the concept of which is endorsed by the Reagan administration. That is what we are talking about, State rights, not detracting from free enterprise. Certainly there is nobody more supportive of entrepreneurship and free enterprise than this administration, the legislation is also endorsed by the National Governor's Association, and by many others, archaeological authorities, people who have set aside funds to preserve historical things in this country, and by host of other organizations

I hope H. R. 3558 can promptly pass the House this year and receive prompt and favorable action in the Senate as well. Let's protect yesterday for our children of tomorrow. That concludes my statement, Madam Chairman.

Ms. MIKULSKI: Thank you very much, Mr. Bennet, for laying out a conceptual framework for your legislation.

The committee will withhold questions for you, because we wish to hear what we anticipate to be rather energetic commentary on your bill. Will you please join us for further deliberations?

Mr. BENNETT: Thank you very much. I will do so.  
[The bill and a departmental report follow.]

99TH CONGRESS  
1ST SESSION

# H. R. 3558

To establish the title of States in certain abandoned shipwrecks, and for other purposes

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 1985

Mr BENNETT (for himself and Mr WRIGHT) introduced the following bill, which was referred jointly to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries

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## A BILL

To establish the title of States in certain abandoned shipwrecks, and for other purposes

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1 SHORT TITLE

4 This Act may be cited as the "Abandoned Shipwreck  
5 Act of 1985"

### 6 SEC 2 FINDINGS

7 The Congress finds that—

8 (1) States have the responsibility for management  
9 of a broad range of living and nonliving resources in  
10 State waters and submerged lands, and

1           (2) included in the range of resources are certain  
2       abandoned shipwrecks

3   **SEC 3 DEFINITIONS**

4       For purposes of this Act—

5           (1) The term “National Register” means the Na-  
6       tional Register of Historic Places maintained by the  
7       Secretary of the Interior under section 101 of the Na-  
8       tional Historic Preservation Act (16 U S C 470a)

9           (2) The term “shipwreck” means a vessel or  
10      wreck, its cargo, and other contents

11          (3) The term “State” means a State of the United  
12      States, the District of Columbia, Puerto Rico, Guam,  
13      the Virgin Islands, American Samoa, and the Northern  
14      Mariana Islands

15          (4) The term “submerged lands” means the  
16      lands—

17           (A) that are “lands beneath navigable  
18      waters,” as defined in section 2 of the Submerged  
19      Lands Act (43 U S C 1301),

20           (B) of Puerto Rico, as described in section 8  
21      of the Act of March 2, 1917 (48 U S C 749), and

22           (C) beneath the navigable waters of Guam,  
23      the Virgin Islands, American Samoa, and the  
24      Northern Mariana Islands, including inland navi-

1            gable waters and waters that extend seaward to  
2            the outer limit of the territorial sea

3            (5) The terms "public lands" and "Indian lands"  
4            have the same meaning as when used in the Archae-  
5            ological Resource Protection Act of 1979 (16 U S C  
6            470aa-470ll)

#### 7    **SEC 4 RIGHTS OF ACCESS**

8            To clarify that State waters and shipwrecks offer recre-  
9            ational and educational opportunities to sport divers and  
10          other interested groups, as well as irreplaceable State re-  
11          sources for tourism, biological sanctuaries, and historical re-  
12          search, it is the declared policy of the Congress that States  
13          carry out their responsibilities under this Act to develop ap-  
14          propriate and consistent policies so as to—

15                (1) protect natural resources and habitat areas,

16                (2) guarantee recreational exploration of ship-  
17          wreck sites, and

18                (3) allow for appropriate public sector recovery  
19          and private sector recovery of shipwrecks which pro-  
20          tect the historical values and environmental integrity of  
21          the shipwrecks and the sites

#### 22    **SEC 5 GUIDELINES**

23          The Advisory Council on Historic Preservation, estab-  
24          lished under section 201 of the Historic Preservation Act (16  
25          U S C 470i), in consultation with appropriate public and pri-

1 vate sector interests (including archeologists, salvors, sport  
2 divers, historic preservationists, and State Historic Preserva-  
3 tion Officers) shall publish, within six months after the enact-  
4 ment of this Act, advisory guidelines for the protection of  
5 shipwrecks and properties. Such guidelines shall assist States  
6 and the United States Government in developing legislation  
7 and regulations to carry out their responsibilities under this  
8 Act in such manner as will be consistent with the policies  
9 stated under section 4.

10 **SEC 6 RIGHTS OF OWNERSHIP**

11 (a) **UNITED STATES TITLE** —The United States asserts  
12 title to any abandoned shipwreck that is—

13 (1) substantially buried in submerged lands of a  
14 State,

15 (2) in coralline formations protected by a State on  
16 submerged lands of a State, or

17 (3) on submerged lands of a State when—

18 (A) such shipwreck is included in or deter-  
19 mined eligible for inclusion in the National Regis-  
20 ter, and

21 (B) the public is given adequate notice of the  
22 location of such shipwreck

23 (b) **TRANSFER OF TITLE TO STATES** —The title of the  
24 United States to any abandoned shipwreck asserted under

1 subsection (a) of this section is transferred to the State in or  
2 on whose submerged lands the shipwreck is located

3 (c) **EXCEPTION** —Any abandoned shipwreck in or on  
4 the public lands of the United States (except the Outer  
5 Continental Shelf) is the property of the United States  
6 Government

7 (d) **RESERVATION OF RIGHTS** —This section does not  
8 affect any right reserved by the United States or by any  
9 State (including any right reserved with respect to Indian  
10 lands) under—

11 (1) section 3, 5, or 6 of the Submerged Lands Act  
12 (43 U S C 1311, 1313, and 1314), or

13 (2) section 19 or 20 of the Act of March 3, 1899  
14 (33 U S C 414–415)

15 **SEC 7 RELATIONSHIP TO OTHER LAWS**

16 (a) **LAW OF SALVAGE** —The law of salvage shall not  
17 apply to abandoned shipwrecks to which section 6 of this Act  
18 applies

19 (b) **LAWS OF THE UNITED STATES** —This Act shall  
20 not change the laws of the United States relating to ship-  
21 wrecks, or other than those to which this Act applies

22 (c) **EFFECTIVE DATE** —This Act shall not affect any  
23 suit filed before the date of enactment of this Act

○


 United States Department of State *Ly*

Washington, D C 20520

RECEIVED DEC 11 1985

 COPIES TO THE CHIEF OF MARINE  
AND FISHERIES

Dear Mr. Chairman.

This letter is written in response to your request for the views of the Department of State regarding H.R. 3558, the "Abandoned Shipwreck Act of 1985." H.R. 3558 is the clean bill version of H.R. 25.

The Department's previous comments on H.R. 25 (copy enclosed), transmitted to your Committee on June 19, 1985, continue to reflect the position of the Department. In these comments, the Department expressed, inter alia, its concern that the bill would assert title to abandoned shipwrecks more than three nautical miles off the Texas, Florida and Puerto Rico coasts. Since the United States claims only a three-mile territorial sea, this assertion of title cannot be supported in international law. Additionally, the Department expressed its understanding regarding the presumption against abandonment which applies to sunken U.S. or foreign governmental vessels engaged in non-commercial service.

With best wishes,

Sincerely,

  
 William L. Ball, III  
 Assistant Secretary

Legislative and Intergovernmental Affairs

Enclosure:

As stated.

The Honorable  
 Walter B. Jones, Chairman,  
 Committee on Merchant Marine and Fisheries,  
 House of Representatives.



United States Dept.

Washington, D C. 20520

JUN 19 1985

Dear Mr. Chairman:

Pursuant to your request of January 14, 1985, I am pleased to provide the Department's views on H.R. 25, entitled the "Abandoned Shipwreck Act of 1985." The purpose of the legislation is to provide for the orderly management of abandoned shipwrecks located beneath U.S. navigable waters. This Department has, apart from the comments below, no objections to the legislation.

As drafted, H.R. 25 would assert U.S. title to any abandoned shipwreck located in or on "submerged lands." For Guam, American Samoa, the Virgin Islands and the Northern Marianas, the term is specifically defined in the statute (sec. 3(4)(c)). For Puerto Rico and for the rest of the United States, definitions are incorporated by reference: 48 U.S.C. 749 and 33 U.S.C. 1301, respectively. There seems, however, to be a difficulty with the definitions incorporated, at least with respect to Texas, Florida and Puerto Rico, because each of those jurisdictions has rights in submerged lands out to a distance of three marine leagues (nine nautical miles).

Notwithstanding these special rights of Texas, Florida and Puerto Rico, the United States claims only a three-nautical-mile territorial sea. The United States asserts no sovereignty seaward of that three-mile limit, even off the coasts of those jurisdictions. H.R. 25 would, however, assert U.S. title to abandoned shipwrecks more than three nautical miles off the Texas, Florida and Puerto Rico coasts, and title could only derive from sovereignty. This assertion cannot be supported in international law. To be sure, the areas in question fall within the U.S. exclusive economic zone (EEZ) and are part of the U.S. continental shelf. A country's sovereign rights in its EEZ and on its shelf do not, however, extend to ownership rights of objects that are not natural resources, and shipwrecks clearly are not natural resources.

The Honorable

Walter B. Jones, Chairman,  
Committee on Merchant Marine and Fisheries,  
House of Representatives.

There appear to be two ways to address this problem. One is to limit assertion of U.S. title to shipwrecks beneath "navigable waters," incorporating by reference the definition of that term in 33 U.S.C. 1362(7). Use of that definition will ensure that there is no assertion of ownership rights beyond the territorial sea.

An alternative approach would be for the bill to assert United States jurisdiction over, rather than title to, abandoned shipwrecks on submerged lands as defined in the bill. Under Article 303 of the 1982 United Nations Convention on the Law of the Sea (which the United States considers reflective of customary international law in matters relating to traditional uses of the oceans), a coastal State may exercise jurisdiction with respect to "objects of an archaeological and historical nature" found on the seabed within its contiguous zone. Since the contiguous zone of the United States extends out to 12 nautical miles, application of the bill to submerged lands nine nautical miles off the coast, even though seaward of the territorial sea limit, would be consistent with international law.

A second matter involves vessels that, at the time of their sinking, were governmental vessels engaged in non-commercial service (generally, but not always, warships). This Department appreciates the careful manner in which H.R. 25 limits U.S. assertion of title to shipwrecks that are abandoned. As you know, the U.S. only abandons its sovereignty over, and title to, sunken U.S. warships by affirmative act, mere passage of time or lack of positive assertions of right are insufficient to establish such abandonment. This fact has two implications for the application of H.R. 25. First, we understand that the same presumption against abandonment will be accorded vessels within the U.S. territorial sea that, at the time of their sinking, were on the non-commercial service of another State. Second, H.R. 25 does not apply to U.S. warships sunk within the territorial sea, unless they have been affirmatively abandoned by the U.S. Government.

We noted two typographical errors in the bill in sec. 5(b) (line 12, page 4), the word "or" appears superfluous; in sec. 6 (line 21, page 4), the citation should probably be "16 U.S.C. 470i."

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report

With best wishes,

Sincerely,

William L. Ball, III  
Assistant Secretary  
Legislative and Intergovernmental Affairs

Ms MIKULSKI The committee would now like to call to the witness table panel 1 to testify on this legislation, Dr Nancy Foster, Director of the Sanctuary Program at NOAA, and Dr Robert Ballard, director of the Deep Sea Submergence Laboratory at Woods Hole. Doctors Ballard and Foster, the committee would like to welcome both of you. Dr Foster, we are looking forward to hearing your testimony as an underwater historian. I think there are those who, when we study history, feel we are a little underwater. We look forward to your testimony, and of course, to you, Dr Robert Ballard, the discoverer of the *Titanic*, who has been able to combine science and entrepreneurship, we welcome you.

Dr Ballard, why don't you start the testimony, in terms of your views on this legislation, and then Dr Foster, we look forward to your testimony.

**STATEMENTS OF BOB BALLARD, DIRECTOR, DEEP SEA SUBMERGENCE LABORATORY, WOODS HOLE OCEANOGRAPHIC INSTITUTE, AND NANCY FOSTER, DIRECTOR, SANCTUARY PROGRAM, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Mr BALLARD Madam Chairwoman and other members of the committee, I want to thank you for inviting me here today. Since man has built ships, nature and man himself have sent many of those crafts of commerce and of war back to the bottom of the sea. Those that sank in the deep sea were felt lost forever while those sinkings which occurred in shallow water have, at times, been the focus of intense search and recovery operations.

Since Alexander the Great descended to the bottom of the sea in the first crude diving bell, salvaging the treasures of the sea has become a part of our folklore. To many Americans, underwater treasure hunters, and salvagers are marine cowboys with the wind blowing in their face and the wild seas to ride.

We have followed their exploits in the news and many times seen little harm in their actions except when they have clearly destroyed wrecks of historical value. This conflict of interest between salvagers and marine historians and archaeologists is at the seat of public attention. Resting in 13,000 feet of water off the North American coast is the greatest shipwreck in man's history, the RMS *Titanic* and, unlike most shallow water wrecks, it lies in fairly excellent condition.

The chances that a ship sinking in shallow water will end up like *Titanic* are small, although some examples have been found in recent years. Many ships which sink in shallow water have struck a reef and are severely damaged or went aground in a storm and were violently pounded against a reef or a rocky coastline. Once the remains of these ships came to rest, their wooden planks are food for the wood boring organisms that live in the shallow waters of the world's oceans.

The metallic objects began to rust in the oxygen-rich waters and encrusting organisms flourished in the sun bathed surface layers slowly turning manmade outlines into mounds of coral or current swept sand dunes. In many cases, all that remains is the cargo itself and salvagers see no conflicts in their recovery efforts.

I am neither here as an archaeologist nor treasure hunter I am a marine scientist and explorer I am not here to enter the debate as much as I am here to point out that the technological genius most Americans are so proud of has entered the deep sea in full force and placed before us a new reality In short, the great pyramids of the deep are now accessible to man He can either plunder them or protect them for the generations to follow

Unlike the shallow reefs of Florida which reduce a wreck to an unrecognizable mound of encrusted coral, the deep sea is a preserving environment Ships in the deep sea were, in many cases, sent to the bottom without having sustained any major structural damage They either took on water during a storm and sank, or like *Titanic*, had a hole punched in their hull In the deep sea, shipwrecks enter a world of total darkness which makes the growth of plant life impossible Without plants, few animals can be found creating a desertlike world with an organism here and another one there The freezing temperatures of the deep *Titanic* site are near 2 degrees Centigrade, which further inhibit biological activity as does the extreme pressures

The pressure at the *Titanic* site is over 6,000 pounds per square inch Far from land, the rate of sedimentation in the deep sea is measured in an inch or so per thousand years And in some deep sea environments like the historically traveled Mediterranean Sea, the bottom waters at times can be poor in oxygen further making the deep sea a giant refrigerator

Some would say, so what If the deep sea is a great preserver of man's history, what good does it do us if it is left in total darkness beyond the reach of man's inquiring mind My answer is it isn't and each day we are moving at a faster and faster pace to make it easily accessible to the general public The technology we used to find *Titanic* is the vanguard of the very technology man will use to find, document, and revisit historic pieces of preserved history in the deep sea Known as telepresence, this technology in cruder form has been with us for many years

Pick up a telephone, turn on your television Going to the movies or turning on the television or picking up the phone are all forms of telepresence The ability to project your thoughts, your eyes, and eventually your hands, is each day becoming an increasing reality Exploration in the deep sea is not driving this technology, but it is beginning to benefit from it

The Space Program with its robots on Mars and Venus, the military with its desire to remove humans from the risks of combat, and the commercial world with their evolving television coverage and the proliferation of multiple cinemas, are the driving forces of telepresence technology Cinemas are becoming smaller and eventually more personalized Commercial companies are even building them in flight simulators to produce lifelike trips through the universe

I strongly believe that if *Titanic* is left alone, that within the next few years, beginning as early as next year, robotic vehicles will be able to enter its beautifully designed rooms and document in color its preserved splendor No salvage operation in the world could duplicate this feat

*Titanic* is just one such example. Literally thousands of ships lie in the deep sea awaiting mankind. The question is, will he come to plunder or to appreciate? This is a debate which will grow louder, not quiet each day. Technologists, like myself, can only cause this problem and suggest its possible impact, but Congress must take the necessary steps and, in my case, hopefully before *Titanic* is destroyed. I strongly believe that

Ms MIKULSKI Thank you very much, Doctor  
Dr Foster

#### STATEMENT OF NANCY FOSTER

Dr FOSTER Madam Chairwoman, and members of the subcommittee, I appreciate the opportunity to appear here today on behalf of the Department of Commerce. I am here to tell you a little bit about our work in protecting a nationally significant historic shipwreck.

Ms MIKULSKI Dr Foster, could you move those microphones closer to you so we can hear your work?

Dr FOSTER That is the first time I have been accused of having a soft voice.

As you know, the United States protects the wreck of the Civil War Ironclad, the USS *Monitor*, and we do this as a national marine sanctuary designated under title 3 of the Marine Protection Research and Sanctuaries Act. This program allows us to designate sites in marine waters over which the United States exercises jurisdiction.

We restrict our designations to sites within which we can determine the existence of resources of national significance, whether they be natural resources or in this particular case a shipwreck. The *Monitor* in fact was the first national marine sanctuary to be designated. It was designated in 1975, 2 years after it was discovered in 1973. And one thing we have learned over the past 10 years with this particular project is that this little ship generates tremendously high level of public interest.

Within the American public, the Canadian public and abroad as well. Because of this, over the past few years we have tried to place a major emphasis on putting together a rational decisionmaking process, and one that is open to the public—a decisionmaking process that allows us to get the maximum benefit and return for the American public, without jeopardizing the historical and archaeological value of this particular shipwreck.

Since the site was designated as a sanctuary, NOAA has sponsored four expeditions to the site. It is lying in 225 feet of water off the coast of North Carolina. Our onsite research over the past years has been exploratory, and about 2 or 3 years ago identified a potential threat of collapse of the remaining structure of the ship.

This threat exists for two reasons. The ship is resting and has rested for about 123 years in a very corrosive submarine environment. Unfortunately, our ship is not tucked away in mud, nor is it tucked away in 13,000 feet of water. We would probably be in a lot better shape if it had been.

That is one reason. The other reason is that when the ship sank, it settled to the bottom upside down, and in so doing, displaced the

revolving turret or the cheese box on top of the ship, so that the hull of the ship, part of the armor belt, is resting across this turret and is actually lifted off the surface. And this is putting tremendous stress on that portion of the ship.

Now what this means to us is that the decision of what should be done with this particular shipwreck can't be deferred to future generations at which time we would hope they would have more sophisticated archaeological and conservation techniques than we do today. In other words, we don't have the luxury of not making a decision as to what should be done with this ship. This does not imply that we are prepared to dash out and start bringing up pieces of iron. In fact, there are many people who believe that you can preserve the value of the *Monitor* through such things as professional filming and documentation of the ship as she exists today. That would allow you to preserve the value without committing to a lengthy, difficult and probably costly recovery and conservation process.

However, there are probably just as many people who believe that preservation of the actual artifact, when it comes to these particularly significant shipwrecks, is the ultimate documentation. So what this means to us is that at the end of this summer, when we complete our nondestructive or nondisturbance documentation phase of this project, we will then begin to evaluate a range of options going all the way from not touching the ship again to completely recovery.

Now, of course, the down side, and there are plenty of people here who can speak to this better than I can, but the downside of any archeological excavation and recovery is that you can't repeat it. If you don't like what you have, unfortunately you can't put it back and try it again. Because of that, before we risk destruction of the ship through archaeological excavation, we intend to make sure that we have gotten all of the information out of it that we can, and that we have achieved the maximum potential from the ship as a wreck as it exists today.

In fact, the goal of the *Monitor* project is preservation through the definitive documentation of the ship. We are doing that historically, architecturally, and then finally archaeologically, if we can, and as I said before, the historical and architectural documentation, the gathering together of all of the information that we can find about this particular ship will be done before we actually return to the site for excavation, if we do.

Now, additionally, we have made a commitment that we will not recover any more material from this ship until we are confident that we can take that material all the way through conservation and effective display, and in fact, until we are positive that that is the best way to bring the story of this ship to the American public.

During our previous expeditions, we have recovered—we did a test excavation in 1979—over 100 artifacts which we do have in a collection, and in 1983, we brought back the 1,200 pound anchor. Therefore we do have some artifacts available for public display.

I would like to make the point that we do not advocate that all historic shipwrecks should be treated in the way we are treating the *Monitor*. We are talking about unique, special, nationally significant shipwrecks here. And I don't think that all historic ship-

wrecks fall into that category. Probably if we knew where all of the historic shipwrecks were in U S waters, there would be a only handful that would fall into the category that we feel the *Monitor* belongs in.

I will be very glad to answer questions, if I can, and if I can't, I will be glad to furnish the information at a later date.

Ms MIKULSKI Dr Foster, how did we find the *Monitor*?

Dr FOSTER In this sense it is sort of similar to the *Titanic*. We found it using state-of-the-art technology at that particular time in 1973. We confirmed its identification using a naval research ship, the *Alcoa Sea Probe*. The Navy at that time wanted to test this ship, and this was a wonderful opportunity, so it sounds vaguely familiar.

Ms MIKULSKI My question is, was the *Monitor*, to more precisely ask it, was it found by amateur divers?

Dr FOSTER No.

Ms MIKULSKI Was it found by a Government-sponsored project? Did you go looking for the *Monitor*?

Dr FOSTER Oh, yes. People had been looking for the ship for, I guess, intensively looking, for about 25 years, probably looking for 123 years, but the particular expedition was in 1973 took place on board a Duke University ship, the *Eastward*, and it was comprised of representatives from other universities, from Government agencies, National Geographic.

Ms MIKULSKI But who funded it? Who paid for it?

Dr FOSTER It was a combination.

Ms MIKULSKI A combination of what, Government funds or private sector funds?

Dr FOSTER Primarily private sector funds. I am not sure. That was a little before my time, but I think if there are Government funds involved, it would have been Navy funds, but I am not sure there were any.

Ms MIKULSKI Who paid for the Duke University ship?

Dr FOSTER These are people contributing. They were contributing time. I think perhaps there was some funding from National Geographic. I think that all the people who were interested at that particular time put in money to this expedition.

Ms MIKULSKI I think we are confusing institutional funds with private sector. My definition, for purposes of this hearing, is that private sector is not the nonprofit sector, but did somebody go out, raise money, sell shares?

Dr FOSTER No, no, ma'am. No, this was not private sector money in that sense?

Ms MIKULSKI So it was not an entrepreneurial activity?

Dr FOSTER No.

Ms MIKULSKI It was not a risk capital venture, is that right?

Dr FOSTER Not to my knowledge.

Ms MIKULSKI Is that true of most discoveries of historic shipwrecks, or were they found by amateur divers?

Dr FOSTER I am probably not the right person to respond to that.

Ms MIKULSKI Who would be?

Dr FOSTER I would say a professional archaeologist like Dr Bass who has some experience going out and looking for historic shipwrecks

Ms MIKULSKI We will reserve our questions on that then Dr Ballard, I think you have reviewed the bill, H R 3558, and you are both a businessman, an entrepreneur and a public servant As you heard earlier, we have this dilemma between the entrepreneurial activities and historic preservation

Do you have any comments on this Specifically, on this particular bill? Do you think it is a good idea? Would you add any other suggestions, or do you just have any concepts, specific concepts, on how we can both recognize entrepreneurial activity and yet preserve our common heritage?

Mr BALLARD I think that is the crux of the debate I certainly know in the activities that I have been involved in—that have led to discoveries of the *Titanic* or other ships or other things of interest to the public—most of those are driven by individuals and the concepts of individualism which America is so strong in promoting amongst its citizens, and I think it is critical that any bill that is passed does not go across the American heritage of how it gets things done

It looks for a government to help its people, not lead its people, in that respect And I believe that that is the crux of the dilemma you have before you How do you create a structure to preserve wrecks of historic importance, and at the same time provide the incentives for people to find them? I do not really believe that the Federal Government will set up an agency to find shipwrecks I would hope not And I would hope that they will create the proper incentives with this bill, and I think there is the attempt being made, and I don't see a problem generically with the bill

I would be concerned with having it apply to anything that goes to the bottom of the ocean, or to wrecks like I say that have been reduced to nothing but their cargo

I am not going to get into if that has archaeological significance I will let George do that, but I think it is dangerous to have a bill that is just categorically across the board putting an archeological or historical stamp on everything that would discourage their discoveries in the first place

Ms MIKULSKI Thank you I know that many of my colleagues have additional questions I will now turn to Mr Shumway of California

Mr SHUMWAY Thank you

Just to follow up on that, Dr Ballard, I would take it, then, you are suggesting that the *Titanic* is of historical significance sufficiently to shield it from treasure salvors?

Mr BALLARD I hope It is in the high seas

Mr SHUMWAY But at the same time you say there are other wrecks out there that don't have that significance, that could be?

Mr BALLARD Yes, I think that you have a full spectrum of ships, and the problem is how do you take a law and create the environment that you wish to create, and everyone has their own concepts I am sure that you will get a strong argument on the part of salvagers to minimize what is historical, and you will get a strong ar-

gument on the part of historians to minimize what would be salvage

I hope in the case of the *Titanic*, for example, in our particular case you have debris that is scattered all over the floor of the ocean that has, I can't believe, any historical or archaeological significance on the bottom of the ocean, on mud. It could be recovered and placed into a museum—I would hate to see it on sale in Neiman Marcus—whereas the ship itself has a historical significance as it sits on the bottom of the ocean.

Mr SHUMWAY You have talked about the motive or the incentive for salvors to discover hidden treasure or lost treasure, and that certainly is a question we need to resolve. But I am concerned also about where we draw the line in terms of definitions. The *Titanic*, I think we would concede, has that kind of historical significance. Many other wrecks do not. If we are going to fashion a bill allowing some to be pursued by salvors and others not, somehow we are going to have to draw the line between the two categories, and that is going to be a challenge that I guess you are ceding to this committee. You are not telling us how we should draw the line?

Mr BALLARD I am just telling you that as a technologist, I am not here as a historian, archaeologist or salvager. I am here as an explorer and technologist, and you have a problem is what I am telling you. That problem is going to get worse.

Mr SHUMWAY And you have caused the problem, as you have admitted in your testimony. We appreciate that. One aspect of this is that it seems to me that if indeed we protect these wrecks to the extent that they cannot be touched, cannot be explored, it is difficult for me to see, then, how we are really serving the purposes of history or archaeology. If there is something out there that is totally immune from further human contact—

Mr BALLARD That is not true.

Mr SHUMWAY What value does it have archaeologically?

Mr BALLARD That is what I am saying. That is not true. Where we are with the technology, it is moving at an extremely rapid rate now, and entering the deep sea in full force. We have the ability right now to enter the *Titanic*, for example, with robotic vehicles and document its situation in very high quality, and to create, if you will, a museum tour. The technologies that are developing in simulating telepresence—in other words, so it is a personalized tour, it isn't a canned tour—are just a few years away.

I believe that you can leave the *Titanic* where it is and have free access to it through technology, and fairly inexpensively, so that a person, you can sit in a museum environment or in a cinema environment and have a personalized visit to that ship, and that is going to certainly happen in the next few years.

Ms MIKULSKI If the gentleman will yield. What you are saying, Dr. Ballard, is that we won't be able to go out—I mean, the general public will not go out and look at it, but there will be robotic telegraphy?

Mr BALLARD Your mind will go out there.

Ms MIKULSKI The robot will go out there and be taking essentially a robotic tour of the *Titanic*, and then we would be able to watch it—

Mr BALLARD Right

Ms MIKULSKI [continuing] From some other areas, so you literally will have robotic tours?

Mr BALLARD That is correct, and even a little more advanced than that. The robotic vehicle can find many various decision points. In other words, you can have a canned tour. When people go to museums, they can either be led around by the hand or they can choose to go around on their own pace. What I am saying is you will have both options through the technologies that we now have. We have those technologies now.

We are not waiting for something to be done, and you will be able to do a personalized tour of these historic sites, even though they are in 13,000, 20,000, 30,000 feet of water. And I am saying that the environment that Mother Nature has provided to preserve them would be prohibitively expensive to duplicate on land, particularly when a ship is 882 feet in length.

Mr SHUMWAY Dr Foster indicated in her testimony that we have, for example, from the *Monitor*—the anchor, I believe you said, Dr Foster, is that correct?

Dr FOSTER Yes

Mr SHUMWAY What if in the future we wanted to take a similar kind of souvenir item from the *Titanic*, where would we draw the line? Would it be something from the ship's safe?

Mr BALLARD No, no. If you look, hopefully—and this afternoon's presentation will show you, that you really have two situations regarding the *Titanic*. You have the *Titanic* ship itself resting on the bottom in fairly good condition, although we obviously haven't tried to pick it up. I don't think it would survive a salvage operation intact. It's stern is already gone and severely damaged, but there is a tremendous amount of material from the *Titanic* that is strewn all over the ocean floor. That material is susceptible to crude salvage operations. A person could go out there tomorrow and drag a dredge over the bottom, destroy 95 percent of the contents, and recover 5 percent and sell.

One could do that fairly cheaply. A fishing boat, and you could make a profit. My feeling is that that material is at peril, and that is material—stained glass windows, beautiful stained glass windows just sitting on the bottom of the ocean, beautiful china and other personalized objects just on the mud. I believe that those should be recovered and put in a museum, but not the ship proper.

Mr SHUMWAY Thank you, Madam Chairman

Ms MIKULSKI Thank you very much, Dr Ballard. One question from me. This technology, has this been invented and manufactured in the United States of America?

Mr BALLARD No. The *Titanic* discovery was a joint effort with the French Government. France, Germany, England, Canada, other Western countries are developing this technology. A lot of what we are doing is something out of what we refer to as the oil patch, oil patch technology going deeper. As I said, military technology, and commercial technology, the television industry itself. This technology, for all practical purposes, is out of control and is moving at an incredible rate, and you are seeing its impact. America has been a major contributor, but not the sole contributor.

Ms MIKULSKI Thank you The chair would like to recognize—  
Mr BENNETT, do you have any questions?

Mr BENNETT I have no questions

Ms MIKULSKI Mr Saxton, do you have questions?

Mr SAXTON Just briefly, I would like to expand the conversation, if I may

Dr FOSTER, if there were a find of revolutionary era American vessels in tidal waters in a historic state, would you suggest that those be under the auspices and control of the Federal Government or the State government?

Dr FOSTER Not necessarily the Federal Government What I am saying is that in the Marine Sanctuary Program, we have the authority to designate those sites, and if it were in State waters, of course, we would have to do this working very closely with the State, and we would have to have the approval of the government of the State in order to designate it as a sanctuary

I am sure there are revolutionary ships that are perhaps not of national significance, and believe me, those are two words hard to define as well If it were nationally significant, I would hope that somebody would look at it for protection

Mr SAXTON Would revolutionary-era ships that were used by colonial forces in your opinion be of historic significance?

Dr FOSTER Well, certainly they are of historic significance It is interesting because we have given some time talking about the possibility of coming up with some way of developing criteria that would allow you to divide historic shipwrecks into terrific nationally significant, less than, and even less than That is even harder than defining nationally significant

Mr SAXTON Is that an issue that we need to address legislatively?

Dr FOSTER You mean the definition? Well, I would think you have sort of done that in the bill, and I would think that by calling upon the advisory council and perhaps with some of the experience that we have had, you could sort of come up with that through your guidelines rather than legislatively

Mr SAXTON Thank you

Ms MIKULSKI No further questions? The Chair would like to thank panel No I for their most informative testimony

We will now call panel II Mr Mel Fisher, president of Treasure Salvors, Inc, accompanied by Mr David Horan, and Dr Robert Marx, the managing director of Phoenician Exploration Ltd and president, Circle Bar Salvage, accompanied by Ms Anne Giesecke I know Mr Fisher will be introduced to the committee by Representative Fascell of Florida

Representative Fascell, we know that you wanted to introduce one of Florida's most distinguished citizens, whom we have read about in everything from Time, Newsweek to Money magazine

#### STATEMENT OF HON DANTE B FASCELL, A U S REPRESENTATIVE FROM THE STATE OF FLORIDA

Mr FASCELL Madam Chairman, members of the committee, I am delighted to have this opportunity I will just take a moment to introduce Mel Fisher, of Treasure Salvors, Inc I want to say a little

something about a gentleman who has evoked a great deal of interest and considerable emotion, with me, and I think with many other people, because he has fulfilled a dream that has roots and immediacy, a dream that many people share. It is about as American as anything that I know of.

I cannot tell you the thrill I experienced the first time I looked at a map that had marks on it indicating where ships went down that were part of the Spanish trade group, and searched for what cargo they carried on them. I avidly followed all these years, and wished that I had had the skill and the opportunity to be part of such efforts.

We are not talking about something that is on solid land that I can get on my camel and go see. Perhaps modern technology can give us a way of doing that. We can remove the sand and the silt, and we can all look through the eyes of a camera and enjoy the thrill of reliving history in our imagination or as we read about it.

Now, I don't want to presume on the already difficult task of this committee, especially with my dear friend and dean of my delegation, sponsoring one of the bills. We also have a distinguished citizen who is testifying here, who has ideas of his own which are worthy of consideration because of his experience. Also, my dear friend, the secretary of state of Florida, is behind me, and he has ideas, too. I am sure the committee in its wisdom will weigh all of the factors.

But what are we about here? What best serves the public interest?

I won't repeat all the options you have already heard about this morning. But it seems to me, as an ordinary citizen, it would be a shame to take away the romantic adventure of discovery. There should be a responsible place for private enterprise in this giant undertaking of archeology and discovery, in which all Americans, indeed the entire world, can share.

Because of the finding of the *Titanic* and the fact that it is available, the finding of *Achoa*, seeing actual treasures which were made available in a museum, which I personally saw, I believe there is a responsible place for private enterprise to do this in conjunction with the State.

If I thought that the State of Florida, or the Federal Government for that matter, while taking title to all archeological matters underwater, would spend the money and take the time to have the professional archeologist subcontract to every university in the United States in order to do the research, well, I am not sure I would be satisfied with that, although I am sure plenty of people would be.

What I am saying is, here is a responsible citizen who ought to be given a place so that he, and others for that matter, can engage responsibly in the archeological history of this country, and do it in the fashion which makes it available to the public.

It is with great pleasure and privilege that I introduce one of the foremost experts, Mr. Mel Fisher.

Ms. MIKULSKI: Thank you very much, Congressman.

Mr. FISHER: Quite an introduction there.

Ms. MIKULSKI: Mr. Fisher, I intended to give you a rousing welcome to the committee, to talk about how you have brought ro-

mance to science, and a variety of other things, but the gentleman from Florida has done that. The committee welcomes you as one of the foremost entrepreneurs in this activity, and we look forward to your testimony and how we can achieve this balance by stimulating entrepreneurial activity and recognizing our common heritage.

Would you please proceed with your testimony?

**STATEMENTS OF MEL FISHER, PRESIDENT, TREASURE SALVORS, INC., ACCOMPANIED BY DAVID HORAN**

Mr. FISHER: Thank you, Chairwoman. I think what this boils down to really is nationalizing the salvage industry. I think it goes against all free enterprise and American ideas. The Government doesn't need to own all these shipwrecks and all the antiques that are out in the ocean. All it needs is archaeological guidelines. Under the name of archaeology, they wish to take title, property, antiques, artifacts. That is not right. It is not fair. They could also take antique automobiles and all antiques owned by any American, if they can do that. If they want archaeological guidelines, I have written them up for them. You see, I have a staff, a large staff, a larger staff than any State or the Federal Government, of archaeologists. They are all accredited and have been working with me for years. I also have a large staff of preservationists. They have been working with me for years.

We have the largest preservation laboratory probably in the world, and the best museum pertaining to this type of material. We have excellent curators.

The chairperson mentioned that we have to decide between salvagers and archaeologists. That is not true. We are one and the same. We are a team, and we have done a damn good job.

In the Constitution of the United States, there is a sentence that says the States may not enter into matters of admiralty. They have no jurisdiction. We should adhere to the Constitution, not try to change it here with the stroke of a pen.

Our forefathers also created admiralty law at the same time they created the Constitution, because they knew that this must stand on its own. These laws were created, in all sincerity, by the same guys that did the Constitution, and we should follow on with their ideas, because we have done real good. For more than 200 years, admiralty law has worked admirably. It has been very fair to everyone. It also encroaches archaeology. You seem to think that admiralty law is against archaeology. Admiralty law preserves archaeology.

In the court cases that we have had, the judges require that we do proper archaeological preservation, and get good data and have things preserved properly before we divide them or put them into museums.

The salvors are dedicated to preservation and archaeology in museums. It would be ridiculous for us to destroy artifacts or shipwrecks, absolutely ridiculous. We are trying to make a living at it, you know, and that is only part of it. It is not making a living, but we are really dedicated to it, and if you come down to Key West and see our laboratories and exhibits, and attend some of our educational seminars, you will find out what I mean.

We have had seminars all over the country teaching kids and sport divers and anyone interested how to do good archaeology, how to use remote sensing equipment, how to beat the Federal Government. We teach them all the things we think are necessary to exist and enjoy life. We employ a lot of people.

Ms MIKULSKI Do you run a weekend college? We want to come down.

Mr FISHER What?

Ms MIKULSKI We asked if you run a weekend college.

Mr FISHER Yes. We will take you out on the boat and you can have lunch with the divers and ask them a few questions. I just auctioned off two trips like that in Orlando last week and they went for \$34,000 each. It was a benefit for the football team.

Anyway, if you nationalize salvage business, you are going to put a hell of a lot of people out of work. We do a lot of papers on archaeology. Our group of archaeologists have done more books and papers, and our historians, than all of the States put together. We create tourism. We bring millions and millions of bucks into the United States, in Florida, in Key West.

We are doing a damn good job about it. The whole world knows about us. We have been on satellite TV in China, Russia, India, the middle of Africa, and editors, students and scholars are coming from all over the world to learn about history and archeology and see these beautiful treasures.

I do not come here empty handed. I have written my own act of Congress, which I want to present to all of you to study. In it it does not say that we want to pass an act saying that later on we are going to make up some rules and regulations to become law. I wrote it all out, the whole thing in detail, so you have all your laws, rules and regulations and archeological guidelines right there in your hand, and then when a private enterprise salvor wants to go out in the ocean, he knows what is required of him because he has got the guidelines right there. He has to do good archeology or he cannot work.

I would like to make that act a part of my presentation here and also Mr. Dave Horan here, sitting next to me, has been working on the law for many years with me and for me, and he spent several years—we have gone through 111 court cases fighting the States and the Government, and fortunately we won all 111 cases. How about that? It must mean we were right, and I cannot see why you folks now, after me spending \$1,600,000 and all these court cases, some of them 8, 9 or 10 days long, can come along just with the stroke of a pen and say, well, that is all bygone. Now we are cancelling admiralty law. We are breaking the Constitution. We are going to write a new law and to hell with history.

Chairperson, I would like to let Dave talk a minute, because justice is not being done here, you know. I am the only guy on our side testifying, and I would like to let Dave explain a little bit about how it is when you do work under a State law, where they can make any rule and regulation they want become law without going back to the legislature.

[The prepared statement of Mel Fisher follows.]

## PREPARED STATEMENT OF MELVIN A FISHER

After long and serious thought, I would propose an alternate bill to the recently introduced H R 3558, the "Abandoned Shipwreck Act of 1985" This Act as re-written from H R 25, has gone so far afield that it now proposes to protect natural resources, although there are plenty of federal and state laws to do that It is so broad that interpretation may clog the courts for years to come We will find ourselves up to our necks in alligators when the real purpose was to drain the swamp

If the real purpose of the Bill is to protect historic shipwrecks, then the bill I propose will do that while protecting the rights of all those who would enjoy our seas If we are really serious about protecting historic shipwrecks, we will concern ourselves with how they are worked, not who owns them We will not place unclimbable barriers to private enterprise, but will have a consistent and fair national policy, administered by the Federal Admiralty Courts as the Constitution intended and not a proliferation of state laws which will only benefit looters as has occurred in all countries of the world with a "hands off" policy as to historic shipwrecks The bill I propose is very specific as to archaeological guidelines and control, while providing the salvor or archaeologist the protection of the Admiralty Courts

Attached and part of this testimony is the rough draft of the bill I propose

CONGRESS  
SESSION

# \_\_\_\_\_

To provide for the protection of any historic shipwreck located on the seabed or in the subsoil of the lands beneath navigable waters within the boundries of the United States and its Territories

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SENATE OF THE UNITED STATES

DATE: \_\_\_\_\_

Senator \_\_\_\_\_ introduced the following bill; which was referred to the Judicial Committee and the Merchant Marine and Fisheries Commision.

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A BILL

To provide Archaeological Guidelines for the protection of any abandoned historic shipwreck located on the seabed or in the subsoil of the lands beneath navigable waters within the boundaries of the United States and its Territories.

1 SEC. 1. Be it enacted by the Senate and House of  
2 Representatives of the United States and its Territories in  
3 Congress assembled,

4 That this Act may be cited as the "Archaeological  
5 Guidelines Act for Shipwrecks".

6 SEC. 2. (a)The Congress finds that--

7 (b) The purpose of this Act is to secure, for the present  
8 and future benefit of the People of The United States, the  
9 protection of historical shipwrecks on the seabed and in  
10 the subsoil of the lands beneath navigable waters within the

1 boundaries of the United States and its Territories.

2 SEC. 3. The "Archaeological Committee" of the National  
3 Park Service is hereby authorized to enter into contracts  
4 with salvage companies, individuals or other entites on  
5 behalf of the United States and its Territories, provided,  
6 however, that the contract conforms with the Guidelines  
7 enumerated herein. A three (3) person "Archaeological  
8 Committee" shall be presidentially appointed from personnel  
9 of the Nation Park Service.

10 The "Archaeological Committee" is hereby authorized to  
11 delegate its authority to the States and Territories of the  
12 United States

13 SEC 4. The United States Maritime law of salvage shall  
14 apply to any historical shipwreck on the seabed or in the  
15 subsoil of the lands beneath navigable waters within the  
16 boundaries of the United States and its Territories.

17 SEC. 5. For the Purposes of this Act--

18 (a) the term "historical shipwreck" includes, without  
19 limiting the generality thereof, sunken and abandoned ships  
20 and wrecks of the sea and any part of the cargo, contents,  
21 objects, artifacts and implements of historical,  
22 archaeological, scientific, or educational interest

23 (b) the term "salvage" means the compensation or reward  
24 allowed by maritime law to persons by whose efforts a sunken  
25 ship or wreck or her cargo, or both, have been saved in whole  
26 or in part from marine peril, or by whose efforts such  
27 property has been recovered from actual peril or loss, as in

1 cases of shipwrecks, dereliction, recapture, or finding;

2 (c) the term "lands beneath navigable waters" has the  
3 meaning of the beds and subsoil of all navigable lakes,  
4 oceans, harbors, rivers, and streams

5 SEC. 6 Cultural Heritage Protection. Before January 30 of  
6 each year the Salvor will prepare an inventory of all items  
7 salvaged during the previous year. This inventory will be  
8 submitted to the "Archaeological Committee" in order that the  
9 "Archaeological Committee" may compile a "wish list" of a  
10 cross-section, a representation of all salvaged artifacts  
11 which the Institute may desire to have donated to them for  
12 their museums. These artifacts requested should not be  
13 repetitious of those which the "Archaeological Committee",  
14 or its delegate already owns. The Salvor will endeavor to  
15 cause the donation of up to one-fifth (1/5) of the artifacts  
16 salvaged, to the "Division Committee" or the State or  
17 Territories deligated, for their museums. If the Salvor is  
18 unable to cause the donation of up to one-fifth (1/5) of the  
19 artifacts then the "Archaeological Committee" may assert an  
20 interest in the Federal Admiralty Litigation in unique  
21 artifacts which it feels are essential to the preservaiton  
22 of the peoples heritage, or the "Archaeological Committee"  
23 may purchase the artifact from the Salvor at its fair market  
24 value. The Salvor and the "Archaeological Committee" will  
25 negotiate and agree on which items will be donated to the  
26 "Archaeological Comittee" In the event that the  
27 "Archaeological Committee" and Salvor cannot negotiate and  
28 agree upon which items should be donated, then the decision

1 of the Federal District Court shall be final

2 SEC. 7. The United States and its Territories hereby  
3 established the following Archaeological Guidelines for  
4 salvaging historical shipwreck sites;

5 The following guidelines specify salvage methods and  
6 techniques which will guide collection of archaeological  
7 information on wreck sites The purpose of these guidelines  
8 is to establish minimum recording standards in order that  
9 sound archaeological provenience information can be made  
10 available to the salvor, the "Archaeological Committee", and  
11 eventually the public. Generally, the guidelines are  
12 concerned with recording location of excavation activities,  
13 provenience of recovered or recorded artifacts, mapping of  
14 wreck sites at broad and detailed scales, as appropriate;  
15 artifact tagging, handling, security, stabilization or  
16 conservation; and diver safety

17 A. Site Mapping Salvors and the "Archaeo-  
18 logical Committee" intend to establish a means of plotting  
19 and charting the wrecksites in order establish and record  
20 the location of all items found The salvors intend to use  
21 an electronic navigational system which theoretically plots  
22 locations to an accuracy of 1 meter Alternatively, Salvors  
23 may use Beach Marker Datums and Sextants to plot and chart  
24 recoveries from the wrecksites.

25 B Data Records Each boat captain will be responsible to  
26 perform the following tasks

27 1. Use a sextant to shoot angles to adjacent pairs of

1 beach markers or use the electronic navigational  
2 system

3 2. Plot the resulting readings on a base map.

4 3 Use a standard coordinate system to record and  
5 describe location of artifacts and bottom  
6 features

7 4 Use a numbered artifact tagging system which will  
8 allow identification and provenience of all  
9 recovered artifacts to be maintained

10 5 Use a log book system which will provide an  
11 accurate record of boat location, salvage  
12 activities, artifacts recovered by tag number and  
13 location, and other useful information

14 The salvor and the "Archaeological Committee" will conduct a  
15 workshop at the beginning of the salvage season to instruct  
16 crew members in these areas and will be further available  
17 throughout the season to instruct new personnel and assist  
18 in recording.

19 C. Recording of Salvage Area Locations All salvage  
20 areas together with their contents and any large bottom  
21 features will be mapped by sextant or electronic position  
22 finding equipment To ensure accuracy of recording search  
23 area locations sextant angles will be shot twice on the same  
24 area, preferably by two different crew members from a  
25 standard location on each boat.

26 Each salvage boat will have and use a sextant with an  
27 accuracy of at least one minute of arc. Sextant readings and  
28 search area feature identification will be recorded on a log

1 book form. Locations will also be recorded on 1 1000 or  
 2 1 2000 scale base maps and will be identified with a two  
 3 letter abbreviation of the boat's name followed by  
 4 consecutive numbers for each search area beginning at the  
 5 start of the season and concluding at the end of the season

6 In the log, brief descriptions and tag numbers of all  
 7 artifacts recovered will be recorded for each salvage area  
 8 so that the tag number is sufficient to determine the  
 9 provenience of any artifact. All Representatives or unusual  
 10 salvage area profiles will be recorded noting in general  
 11 order and thickness of recognizable sediments and the  
 12 location of artifacts, or other useful information  
 13 Profiles which indicate that an earlier salvage area is  
 14 being reopened should be noted. When possible a more  
 15 accurate location description for important artifacts should  
 16 be recorded. For example, in which quarter of the salvage  
 17 area and from what sediment. Finally, any interpretations of  
 18 stratification or association which might be useful in  
 19 understanding the process of artifact scatter and deposition  
 20 should be noted

21 D. Structural Remains and Major Artifact Clusters.

22 Because structural remains and major artifact clusters have  
 23 more important association than scattered material, greater  
 24 care is required in recording provenience. Structural  
 25 remains will be photographed when possible, and mapped at 1 50  
 26 scale on base maps to show position of wooden structural  
 27 members, spikes, and other artifacts as well as details of

1 construction, if visible. Maps will be tied to the standard  
 2 coordinate system by taking sextant angles to beach datums  
 3 from buoys marking mapping reference point on the bottom or  
 4 by use of the electronic navigational system. Structural  
 5 remains will not be moved or undermined unless transfer,  
 6 storage, and conservation facilities are available, however,  
 7 remains of the ship may be buried alongside the site until  
 8 such time as a proven preservation system can be developed

9 E. Artifact Tagging: All recovered artifacts will be  
 10 tagged individually or as a group when from a single  
 11 provenience. Anchors and cannon recorded and left on the  
 12 bottom will also be tagged. Tags will be plastic with  
 13 permanent imprinted numbers and affixed to artifacts or bags  
 14 of grouped artifacts by copper or stainless steel wire or  
 15 nylon cord.

16 For small or delicate artifacts the tag may be placed in  
 17 the same sealed protective container as the artifact. Large  
 18 objects will be individually tagged. Small objects will be  
 19 individually tagged if they are unique or have special  
 20 value. Common objects such as pottery sherds, spikes,  
 21 barrel hoop fragments, musket balls or lead sheathing can be  
 22 bagged as a group and assigned a single tag number when from  
 23 the same provenience. Bags will be of sufficient strength  
 24 that they will not tear or break in handling or rot in  
 25 storage before processing; cloth is recommended

26 F. Artifact Handling: Artifacts may be divided into  
 27 four categories; large objects, such as anchors, cannon, and  
 28 hull structure; miscellaneous encrusted objects (E.O.s'),

1     miscellaneous small identified unique or precious artifacts  
 2     After tagging and recording, artifacts in each category will  
 3     be treated is follows:

4     1.     Large Objects:     These will be left in place on  
 5     site until wet storage facilities are available.     Once  
 6     removed, they should be handled so as to minimize damage and  
 7     should be kept moist.     They must not be allowed to remain  
 8     out of water more than three days.

9     2.     Miscellaneous Encrusted Objects:     These fall into two  
 10     categories:     1) general identifiable non-fragile  
 11     E.O.s; and 2) interesting or fragile E.O.s     Category  
 12     #1 will generally include barrel hoops, spikes or  
 13     general ship's hardware.     Category #2 must be kept  
 14     moist, while onboard and in transit to the storage  
 15     and processing laboratory     Ballast stones may be  
 16     separated from E.O.'s if their removal will  
 17     facilitate handling and not break the E O     E O 's  
 18     will not be broken open on board; instead they will  
 19     be processed on shore at the storage and laboratory  
 20     facility.

21     3.     Common Miscelaneous Small Identified Non-Precious  
 22     Artifacts:     This includes such items as pottery  
 23     sherds, spikes, barrel hoop fragments, musket balls,  
 24     and lead sheathing.     These may be bagged as a group  
 25     from each salvage area or excavation unit.     If iron  
 26     is included, the bags or objects will be kept moist.

27     4.     Identified Unique or Precious Artifacts: These will

1           be assigned individual tags, unless they are clusters  
2           of coins, and placed in individual small plastic bags  
3           or protective jars to prevent damage. Unique and  
4           precious objects will be photographed at the  
5           processing facility and precious objects will be  
6           deposited with a bank or other repository as soon as  
7           practicable for security purposes.

8    G.   Artifact Processing and Stabilization. All artifacts  
9           recovered from sites are to be conveyed to the artifact  
10          processing and stabilization facility. The facility shall  
11          have storage and processing capability and will provide  
12          sufficient security to ensure the protection of the artifacts  
13          which it receives. In addition to the routine processing of  
14          E.O.'s and other artifacts needing stabilization and/or  
15          conservation, all precious artifacts - gold, silver and  
16          jewels -- and unique artifacts will be photographed and the  
17          tag number and provenience data recorded on the photo back  
18          prior to being conveyed to the bank or other repository for  
19          safe-keeping. At least two copies of these photographs will  
20          be prepared: one for the Salvor and one for the  
21          "Archaeological Committee". Final records and inventories  
22          of identified artifacts from each site and excavation unit  
23          will be prepared for each vessel's activities, and artifact  
24          overlay maps compiled at this facility so that results may  
25          be available to guide further salvage activities. Copies of  
26          all field records will be maintained at this facility during  
27          the salvage season and log sheet copies along with artifact  
28          photographs submitted to salvor and the "Archaeological

1 Committee" monthly

2 H Artifact Conservation: All fragile and unique  
3 artifacts of special interest will be given priority for  
4 conservation and/or restoration Interesting encrusted  
5 objects should be X-rayed and preserved as soon as possible  
6 after recovery. The Salvor and the "Archaeological  
7 Committee" will cooperate closely in all stabilization and  
8 conservation activities.

9 I. Diver Safety Spinning shafts, high vacuum suc-  
10 tion intakes and propellers will be caged while divers are  
11 in the water Dive flags will be displayed and standard  
12 dive safety precautions will be followed

13 J. Project Supervision: In order to ensure that the  
14 quality of information recorded is adequate and that the  
15 information is consolidated and interpreted in a  
16 professional manner, the salvor will provide trained  
17 personnel and sufficient trained assistants to supervise the  
18 vessels used in exploration and salvage activities.

19 K. Reporting Requirements: A report on each site salv-  
20 aged will be prepared by the Salvor before the beginning of  
21 the next dive season. The "Archaeological Committee" will  
22 assist in these activities. Copies of each report, journal  
23 article or manuscript resulting from data derived from  
24 salvage and/or exploration activities will be provided to  
25 the "Archaeological Committee" by the Salvor

26 L. Exchange of Archaeological Data The Salvor and the  
27 "Archaeological Committee" intend to freely exchange  
1 historical data and documentation concerning ancient  
2 shipwrecks and also exchange archaeological and historical  
3 data of all work previously done on the wrecksites.

Ms MIKULSKI Dr Horan, we need to move from this committee room by one, and I know that you have been probably the leading legal strategist working with Mr Fisher Is that correct?

Mr HORAN Yes, ma'am

Ms MIKULSKI We would welcome your comments We would ask you to make them as crisp as possible, but at the conclusion of the hearing, if you want to submit additional written material or thoughts in the interests of being sure that your views as well as Mr Fisher's are heard, the committee would welcome any additional material you would like to submit after the hearing

Mr HORAN I appreciate that I will try to keep them very, very short

Over 200 years ago our forefathers gave complete and exclusive jurisdiction over admiralty and maritime claims to the U.S. district courts That is article III, section 2 of the U.S. Constitution In 1910 the United States signed the convention on certain rules regarding assistance in salvage at sea that can be found at 39 Statute 1658 Two years later the United States passed the Salvage Act of 1912 which legislatively implemented the provisions of that international treaty

The Salvage Act of 1912 is codified as 46 U.S.C. 722

Now, that particular act gave exclusive jurisdiction and the Constitution gave exclusive jurisdiction to the Federal district courts They have been in the position to determine the way, the proper way, to salvage each type of shipwreck In the context of ancient or abandoned vessels of historical importance, the Federal courts have in extensive opinions documented that archeology and history are absolutely necessary for areas within which you can state a claim for salvage So a salvor in order to invoke the Federal courts' protection and jurisdiction over his activities must demonstrate to the Federal court that adequate salvage is being done which protects the archeology and protects the history associated with it That is both an impact on the salvor—it means that his product is worth more That gives the incentive and, in fact, it also gives the Federal court the right to go ahead and stop the salvage to make sure that archeology and history is being done

The State governments are given the right to intervene in the admiralty courts to make sure that good salvage is being carried out which protects the archeology and protects the history That was law you are about to change if you pass this legislation You will take a presently functioning system that does work, it maximizes private risk capital, it lets it work, and you are going to destroy it because what you are going to do is destroy the incentive that allows private industry and private risk capital to go out on a 16-year quest and do it Can you imagine going in and trying to get funding before a State or a Federal legislature to go on a hunt for a ship that sank in 1622 and the Spanish spent 40 years trying to find it and then gave up? I cannot imagine it happening, but your incentive is going to be killed because what you are doing in one fell swoop is by giving the title to the States that makes the 11th amendment operate because the States can come in under color of this Federal law and say we own it, therefore, the Federal courts have no jurisdiction

The State courts have no jurisdiction over maritime claims, and certainly the finding and salvaging of a shipwreck under navigable waters is a uniquely maritime claim. So what you are going to do is you are going to deprive the finder of any forum within which to adjudicate his find. You are going to leave him to the whim of State bureaucracies with their administrative procedures. You have deprived him of a court to go into, and then you have administrative procedures where the administrative hearing officers that are going to arbitrate these disputes are paid for by the same people that are sitting there fighting against you. You cannot get a fair hearing. So that is what you are doing, and you are knocking out a presently functioning system.

I can document that. I can document it to anybody's satisfaction. You have got 3 solid years of litigation, over a month of evidentiary hearings, over \$1 million of fees and costs paid for by the taxpayers of Florida that document what 15 years of the State ownership of the resource has done to it, and if you want to go back to that, then at least read the Cobb Point opinions because you have got an impartial arbiter that sat there and listened to all of this like you will never be able to do because, without me being able to speak, Mel Fisher is the only person you would have heard that would have talked against this bill.

Thank you.

Ms. MIKULSKI: Thank you very much for your outline.

Mr. Shumway and I were just commenting on the persuasiveness of your argument. Now we know why you never lost a case.

Mr. HORAN: Thank you.

Ms. MIKULSKI: We welcome that testimony, because this committee does have an open mind. We are trying to struggle with the best way to achieve a balance and not tilt it in any way.

Mr. SHUMWAY: Could I just ask, Madam Chairman, that when Mr. Horan does submit his statement that it may be made part of the record of this hearing?

Ms. MIKULSKI: Oh, yes. Whatever additional legal commentary Mr. Horan wishes to submit will be part of our formal proceedings, so it will be part of the overall record as we further deliberate on this bill.

Mr. HORAN: Thank you.

Ms. MIKULSKI: Most assuredly so.

Ms. MIKULSKI: Now the committee would like to recognize Mr. Robert Marx who is the managing director of Phoenician Exploration Ltd. We understand that you have had extensive and long experience in the field of salvage and its historical overtones, and we welcome your testimony.

The chair must leave for just a few minutes and would ask Mr. Bennett to preside over the hearing.

Mr. Marx, would you proceed?

**STATEMENT OF ROBERT MARX, MANAGING DIRECTOR, PHOENICIAN EXPLORATION LTD., AND PRESIDENT, CIRCLE BAR SALVAGE, ACCOMPANIED BY MS ANNE GIESECKE ON BEHALF OF THE UNDERWATER SOCIETY OF AMERICA**

Mr MARX Thank you, Madam Chairwoman, and committee people

Before I begin my testimony, let me introduce Anne Giesecke who is accompanying me here She is a sports diver-archeology, one of the top experts in policy matters affecting historical shipwrecks Today she is representing the Underwater Society of America, a leading organization of sport divers nationwide

I first started diving in 1949 and several years later moved to southern California where the new sport of skin diving was just getting started I was among the original founders of the Los Angeles Neptunes, one of the first skin diving clubs in the USA My interest in the undersea soon led to the exploration of shipwrecks As a child I was deeply interested in history and archeology and early in life I realized I could combine these interests in the exploration of shipwrecks At that time very little was known about old shipwrecks and most writing on the subject consisted of fantastic tales in which deep sea helmet divers spoke of finding intact Spanish treasure galleons with skeletons at the wheels and giant octupuses hovering over treasure chests bursting open in the ship's hole I soon discovered these tales to be false

After entering the US Marine Corps in 1953, I became a diving instructor and participated in many salvage activities in this capacity I also founded the Camp LeJeune Neptunes, one of the first skin diving clubs on the east coast During this period I spent several years in the Caribbean and was able to pursue my interest in old shipwrecks Upon my discharge from the Marines I decided to pursue a career in the exploration of these sites Back then the term "underwater archeology" was nonexistent, so I used the term "shipwreck exploration" since my objective was not always to find treasure-laden ships Consequently, I attended a number of colleges to gain more knowledge which I felt important in continuing my work To my great dismay I found that neither academia nor any government body—including the Smithsonian Institution—had the slightest interest in old shipwrecks I was told things such as "We can learn a great deal more about the past from land excavations, so why waste the time going in the water" Other people would say, "Anything you can find on a shipwreck we can find on land and in a much better state of preservation" Now, with the help of some recent innovations in marine technology, we know better

The fact is that underwater sites are generally less disturbed than those on land With the exception of a few sites such as Pompeii, Herculaneum and Thera, which were entombed in a fiery flood of lava, land sites typically present stratum after stratum of occupation, with artifacts from different eras mixed together and the destructive effects of man's subsequent activities diminishing the artifacts Underwater sites are largely intact, untouched storehouses of historical data and, knowing this, archeologists are now urgently seeking to protect them from commercial exploitation

But several decades ago, I had to face the fact that if I was to pursue my life-long obsession with shipwrecks in nautical history, I would have to find the means of funding such ventures. This led me to become one of the first commercial salvors working on old shipwrecks in this hemisphere. In fact, I believe I hold the distinction of being in this field longer than anyone else. My work has led me all over the globe, I have worked in 45 different countries, including just about all of the Caribbean islands.

I have always held the opinion that the concept of "finders, keepers" should never apply to shipwrecks or anything old which one might find under the sea. I knew from the start that there were only a limited number of shipwrecks of historical interest under the sea and that sooner or later we would run out of this irreplaceable resource. It has always been my belief that shipwrecks and other underwater finds belong to all mankind and not just to the first person who claims them. I do think that the original discoverer of a site has the right to some kind of remuneration and recognition and that every means must be taken to properly gather all archeological and historical data. Thus, if the finder does not have the qualifications to gather this pertinent information he should only work on the site with the people who are qualified.

In recent years I have found that many people are misinformed about a number of pertinent matters regarding shipwreck explorations and commercial salvors. One of the most erroneous notions is that there are hundreds of commercial salvage firms and thousands of people employed in the search and salvage of old shipwrecks. The fact is that there are fewer than a dozen such companies at any one time working in this business and the majority of these only work on this during the summer months—more as a hobby or interesting way to spend summer vacation. It always makes me laugh to hear such patently false statements as "the commercial salvage world is fighting for its very existence against the Government who wants to put them out of business" or "the free enterprise system is the only way that the salvors can continue to make a living."

The one claim I hear often that is truly preposterous is that commercial salvors will be put out of business if the Abandoned Shipwreck Act passes. The truth of the matter—and I know many in the field agree with me on this—is the exact opposite of this claim. When the various States controlled all shipwrecks in their waters we were all able to work with a great deal less difficulty than we face today. In fact, I personally find that with things as they now stand, that is, with anyone able to run out and file an admiralty arrest on a site, it is both uneconomical and impractical to do this kind of work. In fact, I just came back yesterday from Indonesia where I went to get permits over there because I find it pretty difficult to work in Florida or in the United States under this admiralty act business. If things continue as they have for the past few years, not only will I personally not do any further shipwreck work in US waters, but I know other reputable salvors who will follow suit. Then the fate of the remainder of our ancient shipwrecks will be left in the hands of those who find the profit motive and opportunities of free enterprise higher callings than cultural values or archeological and historical integrity.

Here is an example of how the current situation endangers both historic wrecks and respectable salvors. My group has held an 18-square mile search lease with the State of Florida which is located between Cocoa Beach and Melbourne Beach on the coast of Florida. Several years ago we expended considerable effort, time and money in locating a number of shipwrecks in this area. The season ended before we were able to excavate these sites to determine what they contain. Before we could get back to them, others who monitored our operation clandestinely, filed admiralty arrests on these areas and legally won the right to these sites despite the fact that we discovered them. Rather than end up in a long and expensive legal battle over these areas, I have had to abandon them for the time being in the hope that some kind of legislative solution will allow me to resume my original work on the site.

With a proper law enacted this would never have happened. I would have been able to locate the sites knowing that the State of Florida would protect them from others and would have been granted salvage leases from the State of Florida to properly excavate them. I would be able to tell the financial backers of the venture that the State would take 25 percent and we would receive 75 percent of what was recovered.

But even more important is the fact that the State of Florida would be assisting us in every way with both technical and other important assistance. I know that the State of Florida would do everything possible to gather all relevant historical and archeological data—and to me, this is more important than any financial gain that either my backers or I would receive from any discovery.

To date, I know of only one firm that has found the means to hire their own archeologists to collect the pertinent data and conservators to preserve the finds they made. Even this group has only been doing these things for a short time. This is a very costly process and most commercial salvors have not in the past, nor will in the future, find the means to do a proper archeological excavation. Who is the loser in the split between the Federal court and the State government? The American public, who instead of paying millions for lawyers to argue for State authority over these sites, should be benefiting from the data that old shipwrecks can provide. I have seen countless commercial salvors in recent years, not just in the States but around the world, with total disregard of what important information can be obtained from old shipwrecks, totally destroy the archeological context of a site in the fervent search for financial gains. If this is what is meant by free enterprise then we could easily rationalize allowing people to bulldoze our old historical forts and other buildings on the chance that they might find buried treasures.

In this context, I would like to quote one of our most eminent archeologists whose work has had such an important effect on my life:

To suppose that excavation—one of the affairs which needs the widest knowledge—can be taken up by persons who are ignorant of most or all the technical requirements is a fatuity which has led, and still leads, to the most miserable catastrophes. Far better let things lie a few centuries longer underground, if they can be let alone, than repeat the vandalism of past ages without the excuse of being a barbarian.—Flinders Petrie (1853-1952)

When the States have clear control over the shipwrecks, we can be certain that these miserable catastrophes will not take place and proper archeological standards will be exercised in each salvage operation and that all pertinent data will be collected and preserved for the future. It is for this reason more than any other that I want to see the Abandoned Shipwreck Act of 1985 passed as rapidly as possible. If commercial salvors feel that the restraints of working under the careful supervision of State authorities is such a burden, then they should try to work in other countries with historic wrecks. They will find that they have even a rougher time elsewhere, for most countries have even more stringent laws than that encompassed in the legislation now before Congress.

Finally, I must add that the Abandoned Shipwreck Act is good for the sport divers as well as the commercial divers in that it protects their rights and enables them to explore shipwrecks. As things now stand, they can only do so in areas not held under admiralty arrests and, at least along the coast of Florida, there are not too many of these areas left.

As a professional salvor and self-taught underwater archeologist and most of all as someone whose life-long obsession has been the ancient shipwrecks buried beneath the oceans, I view the passage of the Abandoned Shipwreck Act of 1985 as essential to the preservation of these time capsules from our forefathers. To me, the sanctity of mankind's heritage is more important than the opportunity of any one man to claim the exclusive right to turn national resources into personal profit.

[The prepared statements of Robert Marx and Anne Giesecke follow]

#### PREPARED STATEMENT OF ROBERT MARX

I first started diving in 1949 and several years later moved to Southern California where the new sport of skin diving was just getting started. I was among the original founders of the Los Angeles Neptunes, one of the first skin diving clubs in the USA. My interest in the undersea soon led to the exploration of shipwrecks. As a child I was deeply interested in history and archaeology and early in life I realized I could combine these interests in the exploration of shipwrecks. At that time very little was known about old shipwrecks and most writing on the subject consisted of fantastic tales in which Deep Sea Helment Divers spoke of finding intact Spanish treasure galleons with skeletons at the wheels and giant octupuses hovering over treasure chests bursting open in the ship's hold. I soon discovered these tales to be false.

After entering the US Marine Corps in 1953 I became a diving instructor and participated in many salvage activities in this capacity. I also founded the Camp Lejeune Neptunes, one of the first skin diving clubs on the East Coast. During this period I spent several years in the Caribbean and was able to pursue my interest in old shipwrecks. Upon my discharge from the Marines I decided to pursue a career in the exploration of these sites. Back then, the term "underwater archaeology" was nonexistent, so I used the term "shipwreck exploration" since my objective was not always to find treasure-laden ships. Consequently I attended a number of colleges to gain more knowledge which I felt important in continuing my work. To my great dismay I found that neither academia nor any government body—including the Smithsonian Institution—had the slightest interest in old shipwrecks. I was told things such as "we can learn a great deal more about the past from land excavations" and "anything you can find on a shipwreck we can find on land and in a much better state of preservation." Now, with the help of some recent innovations in marine technology, we know better.

The fact is that underwater sites are generally less disturbed than those on land. With the exception of a few sites such as Pompeii, Herculaneum and Thera, which were entombed in a fiery flood of lava, land sites typically present stratum after

stratum of occupation, with artifacts from different eras mixed together and the destructive effects of man's subsequent activities diminishing the artifacts. Underwater sites are largely intact, untouched storehouses of historical data, and, knowing this, archaeologists are now urgently seeking to protect them from commercial exploitation.

But several decades ago, I had to face the fact that if I was to pursue my life-long obsession with shipwrecks I would have to find the means of funding such ventures. This led me to become one of the first commercial salvors working on old shipwrecks in this hemisphere. In fact, I believe I hold the distinction of being in this field longer than anyone else. My work has led me all over the globe, I have worked in 45 different countries, including just about all of the Caribbean Islands.

Now, I would like to state in the most forceful way possible that I have learned that no one, no matter how lucky or skillful, can ever make a reasonable living from the commercial salvage of ancient shipwrecks. I have been one of the most successful salvors in the field and have found millions of dollars worth of treasures and artifacts, yet after paying all the costs involved in the search, recovery and preservation of the artifacts, not to mention the shares paid to financial backers, governments and the divers employed on each venture, I have not made a proper living from this work. I have supported my family with money made from my 31 books, hundreds of articles, filming and selling documentaries and lecturing. The only people who make any big money in this field are those who get gullible people to invest in wildly hyped, highly publicized treasure hunt schemes which grossly exaggerate the actual amounts of treasure.

Back to my past: after discovering that there was no real academic interest in shipwrecks at the time, I left college and decided to try my hand at commercial salvage. I went to the Island of Cozumel off the coast of Yucatan, Mexico and spent the next three years exploring countless old shipwrecks and making many big discoveries. Although I worked under an agreement with the Mexican Government in which I was to receive 50% of the find, I ended up getting nothing, as the agreement had the following clause: "that the nation has the right to keep anything of historical value to Mexico." They took it all. Needless to say, it was then, in 1959, that I came to realize that one could never depend on finding and selling his artifacts to make a living.

I have always held the opinion that the concept of "finders, keepers" should never apply to shipwrecks or anything old which one might find under the sea. I knew from the start that there were only a limited number of shipwrecks of historical interest under the sea and that sooner or later we would run out of this irreplaceable resource. It has always been my belief that shipwrecks and other underwater finds belong to all mankind and not just to the first person who claims them. I do think that the original discoverer of a site has the right to some kind of remuneration and recognition and that every means must be taken to properly gather all archaeological and historical data. Thus, if the finder does not have the qualifications to gather this pertinent information he should only work on the site with the people who are qualified.

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THE FUTURE OF UNDERWATER ARCHAEOLOGY

by Robert F. Marx

" The richest museum of antiquities in the world is still inaccessible to us. It lies at the bottom of the eastern Mediterranean. We are able to explore the land and air without much difficulty, but we are far from rivaling the fish in their element, who in the words of St. Augustus, 'have their being in the secret ways of the Abyss'. Those ways remain closed to us." These remarks were made in 1928 by the noted Hellenist, Salamon Reinarch, before the technology was developed which has enabled man to discover the great treasures of the undersea museum.

The first to show interest in underwater archaeology was a group of English antiquarians who, in 1775, sponsored an expedition to recover archaeological artifacts from the Tiber River near Rome. Under their direction Greek divers, using a diving bell, worked for three years. They had little success because they had no method of removing the centuries' accumulation of river mud that entombed a number of artifact-laden wrecks. After that, there was little interest in underwater archaeology until early in the twentieth century when objects brought up by Greek and Turkish fishermen and sponge divers aroused the enthusiasm of archaeologists and divers were hired by various museums to recover ancient artifacts.

The first disciplined work on an underwater archaeological site took place in Lake Nemi, near Rome, in 1928. Archaeologists were tantalized by local legends regarding two Roman ships which sank there in the first century A D. Both ships were enormous and sumptuous: each over 230 feet long with decks paved in mosaic and colored marble; with heated baths, marble columns and other decorative features

and luxurious appointments. They were probably pleasure crafts such as those used by Roman rulers and nobility. Feeble attempts had been made, with primitive equipment, to salvage the wrecks as early as 1446 and again in 1535. Twice in the nineteenth century divers recovered artifacts from the site. The last operation was halted in 1895 when it became apparant that divers were destroying archaeological evidence by removing a great quantity of wood planking.

In 1928 the Italian government appointed a team of professional archaeologists to supervise excavation of the ships. During a four year period the entire lake was drained, and after the wrecks were completely exposed, the scientists had a unique opportunity to study two well preserved hulls of the Roman period before they were disassembled and carted off to a warehouse in Rome. Fortunately, the archaeologists made detailed plans of the hulls which were destroyed by German troops in 1944, so that scale models are available for study.

During the American War of Independence a number of British warships were sunk in the York River off Yorktown, Virginia. In 1934 oystermen came upon the hulks of several of them and the Colonial National Historical Park Service and the Mariner's Museum of Newport News in Virginia joined forces to salvage the vessels. U S Navy divers used water jets to blow away mud covering two of the ships and found that they were too poorly preserved to be raised. Consequently, a grab bucket, operated from a barge, was used to recover a representative collection of late eighteenth century armament and artifacts including cannon, anchors, weapons, tools, bottles, ceramics and pewterware. Needless to say, very little detailed archaeological information was obtained during

this imprecise operation. In recent years a team led by John Broadwater, an archaeologist trained by Dr George Bass, has been able to furnish a vast amount of archaeological data from these same shipwrecks despite the havoc wreaked on them before the advent of modern technology which has made acceptable methods possible.

The grab bucket used in the York River was employed as late as 1950 when Nino Lamboglia, director of the Institute of Ligurian Studies, undertook a project which further illustrated the destructive capabilities of the device. In 1925 fishermen working in 140 feet of water off Albenga on the northwestern coast of Italy snagged ancient amphorae in their nets. The clay jars proved to be from a first century B C Roman shipwreck. Unable to secure sufficient funds from the Italian government for salvaging the site, Lamboglia accepted the assistance of a commercial salvage firm. Helmet divers at first removed a few amphorae, extricating them painstakingly by hand, but then, to speed up the operation, a large grab bucket, maneuvered by an observer in a diving chamber, was put to use. Giant steel claws smashed into the wreck, wrenching up amphorae, wood and other objects indiscriminately. This drastic method of excavation went on for ten days during which 1200 amphorae were brought to the surface - all but 110 of them broken. This haphazard destruction of an archaeological site was to stimulate the development of scientifically accepted techniques for future underwater projects.

The first complete and acceptable excavation of an ancient wreck to be directed by a professional archaeologist working underwater took place at Cape Gelidonya on the Turkish coast.

The project was initiated by an enthusiastic American named Peter Throckmorton, a former student of archaeology and an avid diver in the grip of a wanderlust which led him to Turkey after he had roamed all over the globe. In 1959, after sharing countless bottles of raki with a number of garrulous Turkish sponge divers, Throckmorton learned the location of many areas with "old pots in the sea" or amphorae. During the course of a year, he managed to investigate about 35 of these sites, most of which turned out to be remains of ancient vessels spanning a period of more than 2000 years.

One of these wrecks, found in 90 feet of water off Cape Gelidonya, proved to be the oldest ever found - a Bronze Age wreck from 1300 B.C. During his preliminary dive, Throckmorton realized its great importance. He was able to convince several sponge divers, who had planned to dynamite the site and raise the cargo of copper and bronze to sell for scrap (a common practice even today) to leave the wreck untouched. He then reported his find to the University of Pennsylvania's renowned Department of Archaeology.

The following summer a team of 20 specialists in various aspects of underwater archaeology, including Frederic Dumas, who had previous experience in shipwreck explorations off the French Riviera, and George Bass, a graduate archaeology student of the university, joined Throckmorton. The wreck shed new light on seafaring during the distant Bronze Age and furnished a wealth of information on early metallurgy and trade.

The expedition was a clear-cut success and opened the door to future underwater archaeology projects in the Mediterranean and elsewhere. Bass was convinced of the importance of this fledgling science and decided to make it his life's work. Before

he had gone to Turkey, Bass had consulted many land archaeologists and found that, on the whole, they felt that underwater archaeology could never become an exact science. They cited such reasons as: "Nothing could be preserved underwater," or "It is impossible to make proper plans underwater". Some said that it was not only too dangerous but far too expensive relative to the amount of data that could be gained.

During the excavation of the Bronze Age wreck, Bass and his associates had been able to disprove these predictions. They found that a remarkable portion of the cargo was well preserved despite having lain underwater for nearly 3300 years. They had made accurate plans and drawings underwater, and no diving accidents of any kind occurred, although most of the expedition members had little previous diving experience. To the surprise of the sceptics, the entire project, including passage of all involved, cost under \$25,000; a modest sum, considerably less than that spent on many land excavations of the same duration.

Thus the new discipline of underwater archaeology was born and Dr George Bass rightfully deserves to be called the "Father of Underwater Archaeology", which has grown to encompass not only shipwrecks but submerged building sites as well. Bass is still a moving force in the field as Director of the Institute of Nautical Archaeology, based in College Station, Texas. His institute, which is affiliated with Texas A and M. University offers graduate and post-graduate programs in underwater archaeology, the only school in the Western Hemisphere to do so. Bass and his associates are conducting many of the underwater archaeological projects currently underway around the world.

The vast, unfathomed storehouse of sunken ships and cities offers a unique opportunity to the archaeologist. Underwater sites are generally less disturbed than those on land. With the exception of a few sites such as Pompeii, Herculaneum and Thera, which were entombed in a fiery flood of lava, land sites typically present stratum after stratum of occupation. One site often spans thousands of years and frequently artifacts from one period become mixed in with those of another when the site is disturbed, making the archaeologist's unravelling of the puzzle more difficult. A sunken ship, however, is often an encapsulated unit. At the moment when disaster struck time stood still. The vessel plummeted to the bottom and lies there, perhaps covered over with protective layers of mud, silt or sand, representing a single unpolluted moment of a bygone era.

The most challenging problem confronting all archaeology is the accelerating pace at which sites are being destroyed. As bulldozers scar millions of acres each year and whole valleys are inundated for reservoirs and recreational lakes, irreplaceable opportunities to unravel and illuminate the past are lost. It is common knowledge that man is earth's most destructive force, but until recently most of his depredations were confined to land. Now, however, he dredges and fills, floods, pollutes and plunders. Although scuba divers are responsible for looting and destroying many underwater sites of archaeological significance, a greater number are actually ruined by dredging and landfill operations worldwide.

In fact, this problem is so grave that literally hundreds of shipwrecks are being lost every year and yet no outcry has been uttered either by archaeologists or the public.

An example of site destruction has been underway at Cadiz,

off the south coast of Spain Cadiz is an important seaport which has been in continuous use since the eighth century B C. and which contains, beneath its waters, hundreds of sunken ships of many types, nationalities and historical periods. Under the auspices of the Archaeological Museum of Cadiz a visual survey was conducted during 1960-62. Within a three kilometer radius of the modern port 54 Classical Period shipwrecks and 97 of later dates were located. During a recent survey of the same area it was discovered that more than two-thirds of these shipwrecks had been totally obliterated by dredging operations, which are still going on today. Most of the dredged material has been used as landfill and is now covered over by newly constructed buildings.

In nearby Portugal the situation is equally grave. During the recent construction of a deep water port at Sines, a port first used by the Carthaginians and later the Romans, dredging operations completely destroyed at least four Punic shipwrecks and many others of later periods. Further down the coast at Portimão, recent dredging operations destroyed one known Punic and two Roman shipwrecks and, no doubt, many other shipwrecks were also lost forever in this port as more than one-third of the port has been covered over with fill to form the base for a large ship wharf.

In the area of Lisbon, where at least 500 ships are known to have sunk since the late fifteenth century, the devastation is even worse. In a recent interview, the captain of a dredge boat reported that "rarely a day passes in which some vestiges of an old shipwreck are not seen spewing out of the discharge end of the dredge pipes".

On the otherside of the Atlantic the problem is equally acute. Dredging and land fill operations at Cartagena, Colombia, one of the most important seaports during the Spanish Colonial Period, have resulted in the destruction of more than fifty per cent of

Cartagena's known shipwreck sites. At Veracruz, Mexico, another major colonial port, the devastation is deplorable. Probably less than ten per cent of the area's colonial shipwrecks remain. At Rio de Janeiro, Brasil, land fill was used in constructing an airport which completely covers the anchorage area used during the Colonial Period.

Shipwreck sites are not only being erased in protected harbors, but offshore as well. Dredging operations are conducted in the process of laying offshore petroleum pipelines, building breakwaters, gathering landfill and beach replenishment materials, opening new entrances to ports and rivers and for other reasons. Several years ago during the dredging of a new channel at Padre Island, Texas, one of the Spanish shipwrecks from the 1553 fleet which lay offshore was sucked up in the hungry jaws of the dredge pipe and spit out on a nearby beach. This has happened over and over in many other places. The nets of fishing boats have inadvertently damaged shipwrecks for centuries and will continue to do so in both shallow and deep water.

On a lesser scale, many sites are also being plundered and destroyed by divers. The first culprits were commercial salvage divers. During World War II, when there was a keen demand for scrap metal, they combed lakes, rivers and the seas and recovered for melting down thousands of old cannon, anchors and other metallic objects from sunken ships as well as modern scrap. In most cases they were unaware they were making it impossible to again locate an historical wreck site by removing the only clues which could be detected with electronic search equipment.

Since the introduction of scuba equipment in the early 1950's the devastation of sites by souvenir collectors and treasure hunt-

ers has escalated. Along the French Mediterranean coast sport divers are reputed to have plundered every old wreck lying above a depth of 150 feet. The weekend diver who simply picks up a cannon ball or a bronze spike from a wreck and carries it home to decorate his living room perhaps has little idea of the harm he is doing. The very accessibility of many shallow water sites makes them vulnerable to the sport diver. If amateur divers could be enlisted to participate, under professional direction, in underwater excavation projects certainly many of them would gain far more reward than they do from random removal of artifacts. Most divers would rather make a contribution, albeit a small one, to archaeology than to pick up an anchor out of context.

Until recently there has been a failure on the part of many archaeologists to communicate to the general public the significance of underwater sites and there has been very little effort to educate and work with the interested public. Those few professional archaeologists who have worked closely with amateurs on excavations, have been pleased with the results, but closer cooperation on a larger scale is needed.

One example of such an alliance is the excavation of Henry VIII's "Mary Rose", the discovery, excavation and raising of which could not have been accomplished without painstaking work provided by more than 250 dedicated amateur sport divers, under the direction of English archaeologist, Dr Margaret Rule. The English, with their traditional appreciation of the amateur who engages in cultural or scientific activity for pleasure rather than gain, lead the way in utilizing trained amateurs. During the summer of 1982 a total of 24 shipwreck sites were

worked by amateur divers and treasure hunting firms in the British Isles following strict government guidelines and supervised by professional archaeologists.

The future of underwater archaeology hinges, to a great extent, on closer collaboration between professional archaeologists and non-academic divers, such as exists in the British Isles. The motivated amateur should be encouraged to acquire the basic skills needed for archaeological work through training programs like those offered at Fort Bovisand in Plymouth, England. The funds available for training professionals are severely limited, so the vacuum must be filled by the competent amateur for whom underwater archaeology is an avocation.

There are fewer than fifty underwater archaeologists in the world and most of them are self-taught. There are few incentives to lure young people into the field full time. Until a few years ago, it was virtually impossible to even earn a degree in underwater archaeology. Most school-affiliated underwater archaeologists find themselves limited to a relatively few months of field work each year because of other academic responsibilities. Few land archaeologists have shown interest in learning to dive, and yet it is some of these professionals who categorically state that underwater excavations, when they should be undertaken at all, should only be carried out by teams of degreed underwater archaeologists.

This is an unacceptable position for any scholar to take in light of the alarming rate at which underwater sites are being lost forever and the particular urgency to excavate underwater sites which are threatened by man and nature. As proof of the

contribution which can be made by the non-professional archaeologist, one has only to recall that almost every important underwater site excavated to date was originally discovered by an amateur. Furthermore, they have designed and built most of the sophisticated equipment used underwater today. The various techniques employed in underwater archaeology are relatively uncomplicated and can be mastered with supervised practice.

Public interest in archaeology has grown, so that the gap between the trained, paid archaeologist and the educated, disciplined amateur is narrowing. The majority of members of societies interested in land archaeology are amateurs, so-called, because they hold no degree in archaeology. Yet they undertake more field work, laboratory research and publish more reports of their findings than do the limited number of professionals. In an underwater excavation many nonacademics contribute specialized skills such as advanced diving techniques, use of elaborate equipment, surveying, drafting or photography - which they may have acquired or polished in pursuit of their avocation.

In the United States, the Council of Underwater Archaeology was founded in 1958; but unfortunately it is little more than a name, although it has the potential to foster non-professional contributions to underwater archaeology. Thus far, the Council's chief activity has been to organize annual conferences at which professional underwater archaeologists are invited to present papers. Amateurs are not encouraged to attend and during a recent board of directors' meeting one of the directors proposed prohibiting anyone from presenting a paper who had ever worked with treasure hunters or sport divers. Fortunately, the

motion was rejected by the board. However, when the above mentioned member petitioned for assistance in barring a professional archaeologist from publishing a paper, concerning the excavation of a Spanish galleon on which treasure had been found, in a scholarly journal, the majority of the board of directors offered their support. The Council, which could be a vital force in encouraging public education, training and supervised participation in underwater archaeology, has yet to support a single major underwater excavation.

The British were the first to take the logical step of coordinating the activities of divers and vocational archaeologists, who had long been in conflict with each other. In 1963 the Council for Nautical Archaeology was formed in London by representatives from institutions such as the British Museum, the Science Museum, the National Maritime Museum, the Institute of Archaeology and the National Institute of Oceanography. Since establishment of this organization great progress has been made. In 1969 members of the Council were instrumental in forming the School for Nautical Archaeology at Fort Bovisand where thousands of sport divers from a variety of countries have been instructed in the rudiments of underwater archaeology.

As soon as graduates of the School's courses began participating on underwater projects the incidence of plundered sites in the British Isles decreased dramatically, even though the ranks of divers are growing with each year. In almost every case in which an old wreck is located by a sport diver, he reports it to the Committee, which in turn provides technical and financial assistance for the excavation. Thus far there is no comparable body in any other country.

British tradition dictates that everyone who is prepared be given an opportunity to participate and not just a select few. Since the Council for Nautical Archaeology was a closed group with few new members admitted, a group was recently formed named the Nautical Archaeological Society in which both professional and amateur devotees of underwater archaeology hold membership. The Society was principally established as a forum for the exchange of ideas and information relevant to all aspects of underwater archaeology among all those who are interested. Until such an organization is created in the United States and the many other countries with underwater sites of archaeological significance, there will continue to be debilitating problems between the professionals and the amateurs, the end result of which is the regrettable and unnecessary loss of so much valuable historical and archaeological information.

There is a critical need for some kind of international organization to enlighten governments and the public to the increasing loss of their underwater heritage and the importance of underwater archaeology.

## PREPARED STATEMENT OF ANNE G. GIESECKE

As the primary staff author of H R 3194 which passed the House in September 1984, and was reintroduced as H R 25 in this Congress and then modified after discussions with representatives of the sport diving community and introduced as H R 3558, I would like to submit this testimony in support of the bill.

Continuation of the assignment of title to abandoned historic shipwrecks is the simplest, clearest management system.

With title, the expenditure of state funds for the administration of permit systems, the conservation of materials for the public good and the transfer of title to certain artifacts would be the most clear. Any international claims to abandoned shipwrecks in state waters would be foreclosed.

Since the 1950's, the states have managed historic shipwreck archeological sites as part of their historic preservation programs and they have applied minimum national standards since 1966.

These minimum national standards provide for the definition of what is historic and management procedures that incorporate (1) public participation on decision-making boards, (2) public hearing processes, and (3) appeals processes.

States have planning and management responsibilities that apply to a broad range of environmental resources and development activities. The states receive and integrate information about resources from a variety of sources in order to make project decisions and design mitigating measures. Historic resources are considered in the planning process.

Shipwrecks considered as archeological sites are already eligible for grants available for historic resources, 14 states provide additional monetary compensation for shipwreck sites to private sector profit groups.

Most shipwrecks are located by fishermen and sport divers and states have worked with a variety of groups to provide diving opportunities and training for divers. Most archeology done now is done by universities and volunteer groups under state programs. In 1985, more than 25 groups sponsored more than 50 projects to map and recover shipwrecks.

The state's ability to issue and to deny permits for activities on state lands is essential to good management.

An after-the-fact case-by-case admiralty approach to each archeological site would be burdensome to states attempting to manage intensively used areas such as ports and state parks.

State and Federal courts have dealt with conflicts over state permitting and contracting for some time, citizens always have a forum for conflict resolution.

There is no need to substantively distort the admiralty system, which applies to ships and cargoes that are in imminent danger, in order to accommodate archeological sites, which are already being administered by the states.

Of the thousands of shipwreck archeological sites studied, only 4 have had any commercial value and each of those recovery projects has been a financial loss. The resource base consists primarily of prehistoric canoes, canal boats and steamboats with mundane cargoes such as cloth and shovels that are sealed in sediments and are not in danger from the elements.

Conditioning the state's authority to own shipwrecks would require the development of a costly federal bureaucracy.

Currently only 5 sites in Florida state waters and 1 site in Federal waters have oversight by the Federal court. All these sites are being salvaged by M. Fischer.

If the state's authority is conditioned, in any manner, an administrator such as the state Governor, the Secretary of the Interior, or the Secretary of Commerce must determine that the state law meets the conditions of the Federal law.

If the state law is found to not meet the conditions of this Act, then (1) the Secretary of the Interior, the Secretary of Commerce, or the Advisory Council on Historic Preservation could provide a regulatory system to be administered by the state until a new law is passed, or (2) the Secretary of the Interior or the Secretary of Commerce could act as a trustee for the state and administer a regulatory system until he approves a new state law, or (3) the Federal court could make case-by-case determinations concerning historic shipwrecks until state law is found to comply with the Federal law.

In conclusion, the United States is the only major maritime country in the world that has treated a historic shipwreck site under an admiralty regime. States need clear authority to control the excavation of state land for many different purposes from navigation, oil and gas production, to shipwreck recovery.

If H R 3558 passes, all states would maintain their existing authorities concerning historic shipwrecks but the era of expensive litigation including large sums ex-

pended by individuals and the \$20 million currently being expended by states in admiralty courts would come to an end. The diverse and contradictory court opinions which threaten the mainstream of admiralty cases by redefining terms such as marine peril would cease.

The populations of the states who know their own interests and their own resources should be allowed to continue to evolve appropriate systems to manage their shipwrecks. The management system for a prehistoric canoe in North Dakota need not be the same as the system for a Spanish galleon in Florida or a World War II fleet in Truk Lagoon.

# THE FORUM

## Shipwrecks, States and the Courts

by Anne G. Giesecke

During the last two years taxpayers in Florida, Georgia, Indiana, Iowa, Maryland, Massachusetts, New Jersey and Puerto Rico have spent about \$20 million in Federal Court arguing for state, rather than Federal, authority to control the excavation of historically or culturally significant sites and to manage historic shipwrecks for the public benefit. This issue of cultural resource management has roots far back in the nineteenth century. During the 1800s, in recognition of a growing antiquities market and resultant site disturbance, certain land sites of national, military and prehistoric significance were placed under the protection of the Federal government or private organizations.

During the twentieth century archaeologists have continued to work with the public and private sectors to study not only nationally significant sites but also the material remains of the life of the common man. The market for antiquities has continued to grow. During the 1960s historic preservation and the management of cultural resources became a recognized component of the broader federal program for protective environmental legislation. All states developed or modified their environmental and historic preservation laws to become compatible although not identical with Federal legislation.

During this same time, underwater exploration began a rapid expansion. New technologies made oceans and other bodies of water accessible for sport and recreation, and SCUBA (self contained underwater breathing apparatus) diving became popular. New accessibility led to the identification of new sites. For example, in Lake Champlain, Revolutionary War ships sunk in Valcour Bay and the British fleet destroyed during the War of 1812 in Plattsburg Bay were listed as national historic landmarks in 1960-61. In 1965 gold coins that washed up on a beach in Florida led to the location of the 1715 Spanish Plaza Fleet. The anaerobic preservation of materials from submerged sites made them particularly valuable to the antiquities market as well as to archaeologists.

As new sites were located states managed historic shipwreck resources under their historic preservation laws, evolving a variety of systems to work with different types of private sector groups including both profit and non-profit organizations. The state systems worked until 1981 when the Federal Court for the Southern District of Florida ruled that Federal jurisdiction superseded the state's authority over historic shipwrecks. Battle lines were drawn, generally between state archaeologists and commercial treasure salvors, each group arguing for the right to protect the historic shipwreck resources. This formulation of the conflict obscured the real jurisdictional question—between the states and the

Federal Court.

Legislation had been introduced in the U.S. Congress as early as 1979 in response to the developing litigation. The early bills addressed the Federal protection of historic shipwrecks. In 1983 new legislation was introduced; by September 1984 the conflict had been completely and properly redefined as a jurisdictional one, and a resource embedded or buried in state submerged land was defined as state property.

An overview of what the states have been doing to manage underwater cultural resources and historic shipwrecks in particular was developed in 1983 by the author in cooperation with the National Conference of State Historic Preservation Officers. A summary of that survey follows:

The states spend about one percent of their total preservation budgets on surveys, evaluation and conservation of historic shipwreck material. In 1983, 16 states spent approximately \$3,379,253 on these activities.

Twenty-one states reported some survey work, totaling 296,201 acres since 1967. None of these figures includes Federal activities either by the Corps of Engineers or the National Park Service, two major participants in the evaluation of the nation's historic shipwreck base. A total of 671 shipwrecks have been located and identified as historic, using either state or Federal criteria. In all, 2,883 shipwrecks have been located. 437 by states, 2,299 by sport divers and 147 by salvors. Because the state's responsibility is to manage the whole resource base, not just any particular wreck, a number of coastal states have put their money into a search of historical records for historic wrecks. For example, Virginia, Texas and California have each recorded information on more than 2,000 wrecks off each of their coasts. Their next step will be to determine what material remains of those wrecks may exist.

State programs have worked cooperatively with 1,513 divers. More than 6,320,100 visitors saw displays and projects that resulted from work done by 23 of the states. In summary, the survey of state expenditures on historic shipwrecks resulted in a picture of cost-effective, but nascent, management of an important, hard-to-get at resource.

States want to be able to manage the multiple-use demands within their territorial waters. Title to historic shipwrecks, as provided in the legislation, will assist in providing clear legal authority for such management. All states have legislation and programs to protect historical archaeological resources. In addition, since 1963 26 jurisdictions in the United States have passed specific, and remarkably similar laws affecting abandoned historic shipwrecks. It is notable that no state (defined to include U.S. territories and possessions) prohibits sport diving on historic shipwrecks, and

most laws provide in some way for compensation for recovery activities undertaken by private parties.

The state as a multiple-use manager of its resources must consider three special groups that have an interest in historic shipwrecks. The largest group is the sport diving community, with approximately two million members. The next largest is the several thousand members of the archaeological and historic preservation communities. The third group is composed of two to 20 professional treasure salvors.

Each group has a different use for the resource. For the sport diver the wrecks are an important focus for recreational diving; some divers like marked underwater trails explaining the wrecks, some like wrecks undisturbed by modern men, and others like to collect artifacts from wrecks. The diver's desire for unrestricted access to shipwrecks may conflict with the treasure salvor's desire for exclusive use of a wreck, and the diver's random collecting of artifacts from wrecks may conflict with the archaeologist's concern for ordered collection.

To the archaeologist, shipwrecks are an integral part of the total material cultural resource base. Certain social, economic and technological systems of the past are reflected in the patterned pieces of ship and cargo spread across the ocean floor. The treasure salvor's goal is primarily economic; he wants to minimize the cost of recovering gold, silver or artifacts that have a maximum commercial value.

To deal with these various concerns, H.R. 25 and S. 676, currently before the House of Representatives and the Senate will assert U.S. title and then transfer to the states title to abandoned shipwrecks that are: (1) substantially buried or embedded in submerged lands of a state; (2) in coralline formations protected by the state on submerged lands of a state; (3) on submerged lands of a state when included in or determined eligible for inclusion in the National Register will specify that the Act will not affect any suit filed before the date of enactment; will reaffirm Federal ownership of abandoned shipwrecks on Federal lands; will direct the Advisory Council on Historic Preservation to develop non-binding guidelines to assist the states and the U.S. Government in carrying out their responsibilities and to allow for recreational exploration and private sector recovery of shipwreck sites.

The proposed Federal legislation gives the states clear authority to control excavation of state land for the purpose of recovering shipwrecks, and assumes that the states will continue their current protection of historic shipwrecks. The proposed legislation would also allow archaeologists, commercial salvors and sport divers to work together in developing state programs which fit the needs of the resources and populations within a state.

Anne G. Giesecke, an archaeologist and sport diver, has worked on the issue of shipwreck legislation since 1982 and has published several articles and papers on the topic.

Mr BENNETT [presiding] Thank you very much

Mr MARX At this time I would like to introduce Anne Giesecke

Ms GIESECKE I would like to respond to David Horan's statements concerning the preservation of the existing system As I see it, the preservation of the existing system is the State system, and that the Federal court in attempting to overlay their jurisdiction on the State system is threatening that and that H R 3558 will preserve the State system and allow it to continue to function as it has

Continuation of the assignment of the title to——

Mr FISHER Excuse me Is our chairperson present?

Mr BENNETT Yes, I am chairing

Mr FISHER I want to interrupt

Mr BENNETT I do not see who is speaking

Mr FISHER On a point of order My name is Mr Fisher

Mr BENNETT Yes, I know you

Mr FISHER Because Anne Giesecke is a Government employee who has been harassing me for about 3 years now, and I do not think she should be allowed to testify on this committee because she is a bureaucrat, you know, and she admits it, and she is being paid by the Government to oppose me and she should not be allowed as a salvor or an archeologist to be talking here today It is rather cruel, you know

Mr BENNETT I am just temporarily filling in while the chairman is gone She will be back in just a moment But, in order to rule on the matter——

Mr HUGHES Will the chairman yield to me?

Mr BENNETT Yes, I will

Mr HUGHES The gentleman misunderstands these proceedings It is for the chair to decide what testimony to hear, not for the witnesses, and for that reason, Mr Chairman, I think the witness is out of order himself The chair is the one who decides what testimony to take, and anybody who has any relevant evidence has a right to testify

Mr BENNETT Mr Hughes has stated it much better than I can state it We are trying to get all information we can on this subject matter, and there are different points of view Everybody is trying to help our country, and to preserve historic materials, and if we do not have all sides before us, we won't have the right answer, and so you can proceed

Ms GIESECKE Thank you

I would like to correct the record I am here as a private citizen, as a sport diver I indeed am a full-time employee, but I am on leave from my job today I am here only as an individual and as a person representing the Underwater Society of America and speaking for myself and for that community

I will not at this time comment on Mr Fisher's suggestions, but I would like to continue the statement concerning the bill

Mr BENNETT The chairman has now returned, the real chairman, and it is more appropriate that I yield to her at this point I give up the chair You can have it Do you want me to explain what has happened?

Ms MIKULSKI [presiding] Yes, I would love you to, because I thought we had two panelists Now we have four panelists

Mr BENNETT I think what came up is that she was testifying as to her feelings about the matter, and Mr Fisher felt that it was inappropriate because she had been a Federal employee, still is a Federal employee, and he felt that was inappropriate for her to be testifying at this point

With the help of Mr Hughes, Mr Hughes really made the statement that the meeting is open to all kinds of points of view We are just trying to find out what is best to do on this subject matter and, therefore, anybody can testify that has made arrangements before the committee to testify

Mr FISHER But it is illegal

Ms MIKULSKI No, it is not illegal

Mr FISHER It is illegal for her to testify

Ms MIKULSKI I have given you the opportunity to testify, Mr Fisher We are trying to get as many views from as many sectors as possible We wanted to get Mr Marx to testify because he too is a salvor We had Mr Horan testify because he amplified this legal framework of this conceptual bill that you are offering for the committee to consider as an alternative

Now, Ms Giesecke, are you here with Mr Marx or were you invited as an additional panelist?

Ms GIESECKE I am here accompanying Mr Marx and was clarifying the existing structure, the existing State structure that the bill was designed to maintain, the structure that Mr Marx favors

Ms MIKULSKI How about if we just save that for the questions, because we want to move as expeditiously as we can, and as a private citizen, if you wish to submit additional comments, we would most welcome them And if you have them with you now, the committee will be happy to enter them into the testimony

Ms GIESECKE Thank you

Ms MIKULSKI Thank you very much

Let's move to some questions

For you, Mr Fisher, if the legislation as we know it were passed, how would it have affected your claim on the ATOCHA?

Mr FISHER This has no effect on the ATOCHA You see, I won in the Supreme Court of the United States and the appellate courts and a lot of other court sessions, and so I have complete title, right and interest

Now, in central Florida I have another corporation that is working five or six Spanish galleons, and after I won in the Federal court I went to the State of Florida and offered to compromise with them, and we did We made an agreement wherein we would cooperate 100 percent, exchanging archeological data, historical data, and at the end of each year they make up a wish list of things they would like to have for their museums, and we discuss it for 30 days and we cause about 20 percent of the artifacts we recover to be donated to the State of Florida for their museums

Ms MIKULSKI Mr Fisher, in order to understand this bill and also recognizing your entrepreneurial activity, and the enormous financial investment that you have spent over a number of years, I was looking at the ATOCHA as kind of a case example of your activity to say that if this bill had been in operation would it have helped you? Would it have hindered or handicapped you, or would it not have made one darn bit of difference?

Mr FISHER Yes, I can answer that using the ATOCHA as an example

Ms MIKULSKI That would be most helpful, sir

Mr FISHER When we first went out there, the reason we went outside the country and outside the State is because the existing Florida laws we have right now made it absolutely impossible and unbearable to work within State waters My men were arrested and put into jail I also was arrested and put into jail for stealing a cannon They call that a felony It was my cannon They put red stickers on our boats They said we could only work 8 hours a day and a maximum number of 40 hours a week

We are used to going out to sea for weeks on end and 24 hours a day, and we work when the weather is good and not when a bureaucrat wants to go out, and so we had to leave the State

We went outside the country We found the *Atoucha* after two long years of searching We found the first signs of it, and as soon as we found gold, then the State sent a man down and forced me to sign a contract with him, even though it was outside the State of Florida They put a red sticker on my boat, stopped us from working, and they started putting these laws into effect again We could work 8 hours a day

So then I said, well, I have got three boats They said, well then, you have got to have three State agents, and I said, well, give me three State agents and they said, we cannot afford it We have only got one So then I had to pay the payroll of the other two State agents and buy their diving equipment for them and teach them how to dive and teach them archeology Then they said, well, you can only work 40 hours a week, so you have got to have six of these agents and you have got to hire three more guys They got worse and worse and worse, and finally after 5 years of collecting all the treasure that we brought in, they never let us have one item We could not sell anything or borrow against any of our treasures because the State kept it all in their possession in the name of archeology They said, well, we have to study these items for another year or two

And so it had us all tied up for five years, and finally it went to court, Admiralty Court, and I guess you know the rest of the story That is a good example

Ms MIKULSKI Thank you very much

Mr Marx, even though I was not present for your testimony, I reviewed your entire written testimony We welcome, most assuredly, your comments I am sure there will be other questions for both Mr Fisher and for you, Mr Marx, and your advisor

Now I would like to turn the questioning over to Mr Shumway

Mr SHUMWAY Thank you, Madam Chairman

Mr Fisher, you have supplied to the committee a proposed bill which would approach this subject in a manner that is compatible with your activity and your interest, and I appreciate that It is going to give us some good food for thought

But I am wondering how would you anticipate that your proposal would be administered? Would you see it being administered through the court system or would there be set up a Federal agency to oversee such a proposal or how would it be administered from the Federal Government's point of view?

Mr FISHER Both ways, sir Admiralty law would continue as it has for 200 years, doing a good job, and it requires good archeology too However, the States and the Federal Government could still be in the act the way we have been doing the last 3 years with the State of Florida We work hand in glove with the State We have archeological guidelines, a five-person committee that determines these guidelines, and then in the event that there is any hassle or problem or say that the State says they would like to have certain artifacts and we think that is not too fair or something, well then, we let the admiralty judge figure it out He has got that big gavel over both of our heads, the State and the salvors, and if the State thinks we are not doing a good archeological job, they can take it to the judge, if they wish, and then we would lose our salvage award

Mr SHUMWAY Could I just follow up on that because my time is limited here Obviously there would be some expense to the Federal Government to administer a program like that, if it is a five-person committee or whatever it is Would you support using a percentage of the salvor's find as a user fee to support such a program?

Mr FISHER No What I propose is that it be donated You see, there is no business in the United States where the Government takes a piece of the gross right off the top Free enterprise business cannot succeed if the Government takes a piece of the gross It has to be donated, and we donate the items to the Government and in return the free enterprise investor gets a tax deduction from his Federal income tax for having donated this for history and archeology, and then everybody is happy, and the public is served They have their beautiful museums and educational force, in effect, and the person that invests his hard-earned money and has risked his capital is rewarded by getting a tax deduction

Mr SHUMWAY Thank you

Mr MARX, just one question for you In your testimony you account for the difficulties you have had, and then you say that when the States have clear control over the shipwrecks, "We can be certain that these miserable catastrophies will not take place and proper archeological standards will be exercised in each salvage operation," and so forth How can we be certain that that is going to be the case?

Under this proposal we are going to have all of the coastal States each adopting their own regulations, their own plans about how salvor operations will be conducted How can you be so certain that they won't do the same thing that you maintain the Federal Government has done, and that you would have the same kinds of regulations and laws to deal with or perhaps even worse?

Mr MARX I guess I am just hoping for things to be better than they were in the past

Mr SHUMWAY But how do you know that we can be certain of that?

Mr MARX I do not know

Mr SHUMWAY You do not know?

Mr MARX No

Mr SHUMWAY Thank you, Madam Chairman

Ms MIKULSKI Mr Bennett, do you have any questions?

Mr BENNETT I have no questions

Ms MIKULSKI Mr Saxton

Mr SAXTON Mr Marx, in your testimony you indicated that you had found some archeologically sensitive materials that you were about to salvage and that you applied to the State for the appropriate permit, is that correct?

Mr MARX Yes

Mr SAXTON And while you applied at the State for the appropriate permit, some other activity took place which precluded you from pursuing what you had found, is that correct?

Mr MARX Yes Other people put admiralty arrest on the site

Mr SAXTON What is it in the system that allowed that to happen? Did the Federal court system take precedence?

Mr MARX Exactly That is what is happening right now, and that is why I am fighting to have the bill passed, so that that won't happen again

Mr SAXTON And assuming this bill passes, that would obviously protect your interests in the future, pursuant to the course that you chose to follow in the past, is that right?

Mr MARX Yes, sir

Mr SAXTON And would it also reflect in any way upon what has happened to you in your endeavors in the past? Would you intend to make some type of a claim on those treasures which you found?

Mr MARX I think if the bill is passed that all these admiralty arrests and everything are going to be grandfathered in, so let's just say I lost out in that area I would start in new areas again

Mr SAXTON As far as you are concerned, that is by the boards?

Mr MARX Right

Mr FISHER Do you want me to answer that same question?

Mr SAXTON No I want to address a question to Ms Giesecke

Would you explain why you think the present system is good and why it works

Ms GIESECKE I could do that all day, but I will try to be very brief

Article IV of the Constitution, amendment 10, insures property rights to the States The bill attempts to address material, in this case shipwrecks, that is part of State land at this point in time The States have been managing shipwrecks since the 1950's No State has prohibited sport diving Fourteen States offer compensation to private profit sector groups for the recovery of shipwrecks States have the ability for multiple-use management, so that whether there are fishing interests, mineral interests, archeological interests, or salvage interests, the State systems have the planning mechanisms in place to take all of those uses into consideration and make decisions about who is going to use which resource at which time

The States have existing mechanisms for determining what is historic, using the National Register of Historic Places The system that is in place and is functioning seems to be functioning very well, except where there has been an overlay of the Federal court, and in those cases you have additional expense to both private parties and the States

Mr SAXTON Would you care to comment on Mr Shumway's question relative to patchwork of different types of regulations that one would have to contend with

Ms GIESECKE That is much the nature of our system There are many States, many areas where the State laws vary a little bit from place to place, and we do manage to live with all of those minor modifications The minimum national standards that the States use for historic preservation were established in 1966 under the National Historic Preservation Act, so there is some consistency from State to State at a very minimal national level

The difference in resources from those in North Dakota to those in Florida to those resources in Guam is pretty staggering, and the ability of the States to develop legislation that suits their own population interests and their own resource base has worked most effectively and most appropriately In places like Michigan, where you have underwater preserves, where they leave shipwrecks on the bottom for sport divers to go out and look at, there is no collecting in the preserves There are areas in Lake Michigan where sport divers can go and collect artifacts off the bottom Spanish galleons in Florida did not need to be treated the same as prehistoric canoes in Idaho, and the State system allows this kind of flexibility

As I say, we do have some minimum national standards in the 1966 Historic Preservation Act

Mr SAXTON Do you see any weaknesses in the present system that you feel might be changed?

Ms GIESECKE The States have been very conscientious about reviewing and modifying their legislation The laws that were passed in the late 1960's and early 1970's are being reviewed States that do not have specific legislation are developing that legislation, as interest in diving and in shipwrecks has grown in the last few years, so that the changes are being very well done to match the interests of the populations now and the technology that those populations have to access shipwrecks The changes have been very positive No one prohibits sport diving There is a lot of activity and cooperation with the private sector and compensation to the private sector in States where that is appropriate

The archeologists are working well with the State structure, and the situation seems to be developing in a very positive direction

Mr SAXTON Thank you, Madam Chairman

Ms MIKULSKI Thank you, Mr Saxton

Mr Hughes

Mr HUGHES Thank you, Madam Chairman I want to welcome the panel and congratulate you for convening the hearing It really has been a very fascinating one

I share Mr Shumway's concerns On the one hand, I can see the need for diversity and to have the States manage their own resources within 3 miles, but by the same token, when we talk in terms of a national treasure, it seems to me you must have some degree of uniformity What do their countries do, Mr Marx? You have been in Indonesia, recently, how do they deal with their national treasures?

Mr MARX Just about every country, I think, except 13 out of the 167 countries that exist, have national laws protecting shipwrecks,

and most countries—there are a few countries that prohibit it, like Greece I think is one of them, and Libya, and a few other ones where there are no excavations of any kind going on. In most countries archaeologists have to work with the salvors or in some countries, such as France, archaeologists get permission to work on these wrecks.

The average of what is awarded to salvors is usually about 75 percent to the salvor and 25 percent to the country, but a lot of countries have the right to take everything of archaeological, historical and folkloric value. So sometimes you just end up with a percentage of the duplicates.

You ask me what happens in Indonesia. I will tell you. They take 95 percent of the gold and silver, and of the remaining they classify everything as general cargo other than gold and silver. They take 60 percent and you get 40 percent, but you get to deduct your expenses first.

Mr HUGHES: Do foreign nationals in the countries that you have dealt with permit those of other nationalities to come in and actually perform salvage operations?

Mr MARX: Yes, but each year it gets more and more difficult as people get more nationalistic.

Mr HUGHES: There is nothing in our law, is there, that would deny a foreign national from coming to worksites within our 3-mile limit?

Mr MARX: No, in fact, on the coast of Florida this year we had Swiss, South Africans, French—I am not sure what other nationalities—working on shipwrecks.

Mr HUGHES: As I understand admiralty law, there is nothing that would prohibit a foreign national from coming in for one of our national treasures and actually beginning salvage operations. How would we protect ourselves from the efforts of foreign nationals?

Mr MARX: I would like to have Ms Giesecke answer that. She can answer it better than me.

Ms GIESECKE: The way the bill is drafted, the section that says the United States claims title to the shipwrecks. One of the primary purposes for that language is for the United States to assert sovereign prerogative over the shipwrecks imbedded or historical or in coral in the territorial waters of the United States. So, that that United States claim would then be an international claim, and would prohibit other countries from claiming wrecks within the 3 miles.

Mr HUGHES: Do you agree with that, Mr Horan?

Mr HORAN: No, sir, not at all.

Mr HUGHES: Salvage and admiralty law is relatively silent on the issue I am trying to address. As one of the foremost experts, why don't you tell me what you think the state of the law is?

Mr HORAN: The foreign nationals would have the same rights under this proposed legislation as they do under the present admiralty law. The present admiralty law requires that the salvors would be in the position each year of coming up for a distribution of that year's salvage, and the present admiralty law allows a public interest intervenor, whether it be the State of Florida or the Federal Government, to come into such awards.

If, in fact, present distribution selections have not been made by the State, and have not been acceded to by the salvor from the standpoint of donating them, once title is pronounced by the court, then the public interest intervenor is invited to come in and make a claim to objects of great historical or archaeological value that are needed to complete the State or the Federal Government's collections

So, in fact, in the present admiralty law, whether it be a foreign national or a United States citizen doing the salvage, the Federal courts are in the position of awarding right off the top, unless prior arrangements to donate it have been made, which really makes the salvor toe the line and work out his donations

Unless prior arrangements have been made, they can come in and actually apply to the Federal district court by showing that there is a public interest in specific items that are needed for those collections, and take them right away from the salvor So, it is the greatest possible incentive for the salvor to make those donations prior to coming into court, because nobody really knows whether the court is going to award those items or not, and the State has the burden

Mr HUGHES Let me ask you a question Admiralty law over the years has not protected historical shipwrecks It has been enlightened courts that have made the decisions over the years, without guidelines in many instances Do you think that is a good practice and procedure as we become more sophisticated with our electronic devices' detecting and trying to salvage historic shipwrecks? Do you think it is good practice for us to permit the courts to deal on a case-by-case basis without guidance from the policymakers?

Mr HORAN No, I don't I think that what we have seen is the pronouncement of what the policy that works can be, and I think that the provisions of the admiralty law that I refer to should be codified, because in this area of ever-increasing opportunity to go out and find these resources and everything, we need to control, at least from the standpoint of basic archaeological guidelines and everything That is why Mr Fisher's submission is so important

If we set basic archaeological guidelines as part of the Federal law, and the Federal courts are in the position of administering them, we have an impartial arbiter between the private sector and the public intervenor, the State of Florida or the Federal Government, so that, in fact, when the State comes along and says, You aren't doing it right, you have got to do better archaeology and here is why, the salvor can say, Hey, listen, that is going to cost me \$25 million I can't afford to do that

They can then bring that before an impartial arbiter, the Federal district court that has the constitutional jurisdiction over admiralty and maritime matters, and have an impartial arbiter be able to determine that Otherwise, we have got a bunch of bureaucrats that are going to be absolutely the law

Mr HUGHES Probably one of my biggest frustrations in 11 years in Congress has been trying to deal with agencies and problems I have also had many problems with Federal courts There are times when some of the decisions are not entirely in the public interest, and that is what sometimes happens when they are flying blind

Mr HORAN That is correct

Mr HUGHES I don't know how long you have been practicing, but I have been in courts for about 25 years, and sometimes the decisions are rational and sometimes they are not. Fortunately, most of the time they are rational, but there are no guidelines in admiralty law, and that concerns me. We are policymakers. We ought to be determining just what the guidelines should be, what kind of multimedia use we expect, what kind of guidelines we want to have to preserve national treasures, and we can't do that, it seems to me, in a rational way on a case-by-case basis.

Mr HORAN I agree with you entirely.

Mr HUGHES I have some problems with the legislation as it is presently structured, because it deals with up to the 3-mile limit. How about beyond the 3-mile limit? There is a host of issues that we haven't begun to deal with. The problems don't lie just within State law. The problems lie off our coasts, and throughout the world. So, it seems to me that the issues are much broader than we have framed in this legislation.

Mr HORAN I agree entirely. If we can go ahead and have a set of national standards, where it doesn't make any difference whether it sinks off the rocky coast of Maine or the shallows of Florida or off the Texas coast, if there is a standard by which the Federal courts can be guided, that is what Congress ought to be doing. But doing what is being proposed in this legislation is merely turning it over to a bunch of agencies of the State that are going to do everything in the world that anybody can imagine with it, because we have already got the history of 15 years of the State ownership of the resource.

Mr HUGHES I hate to tell you this. I am going to share a little secret with you. No matter what we do, you are always going to have to deal with agencies.

Mr HORAN That is the problem. Thank you.

Mr HUGHES You know there is no better system that I am aware of, and much of the decisionmaking I see in agencies is at times, not all that bad. Thank you.

Ms MIKULSKI Thank you, Mr Hughes, and this panel. Both to this panel, the previous one and the one we will convene next, the record on this bill, this particular hearing on this bill, will remain open for 10 days, and for any witnesses who wish to submit additional testimony that would be most welcome.

The Chair would also like to say for the record that the Bennett bill is a beginning point of discussion on how we can arrive again at a contemporary law on this issue for a contemporary society. We thank this panel for its very insightful testimony, and will now proceed to panel III.

Ms MIKULSKI Now we would like to call panel III, Mr. George Firestone, the Florida secretary of state, Mr. Robert Gray, the executive director of the Diving Equipment Manufacturers Association, and Dr. George Bass of Texas A&M. The committee would like to welcome this panel and would like to call, as our first witness, Mr. George Firestone, who is the secretary of state of Florida. Since this bill originated from there, and your State has many archaeological discoveries, we would welcome your testimony.

**STATEMENTS OF GEORGE FIRESTONE, FLORIDA SECRETARY OF STATE, BOB GRAY, EXECUTIVE DIRECTOR, DIVING EQUIPMENT MANUFACTURERS ASSOCIATION, ACCOMPANIED BY AL HORNSBY, VICE PRESIDENT, PROFESSIONAL ASSOCIATION OF DIVING INSTRUCTORS (PADI), AND GEORGE BASS, TEXAS A&M, ACCOMPANIED BY FRED WENDORF, SOUTHERN METHODIST UNIVERSITY**

**STATEMENT OF GEORGE FIRESTONE**

Mr FIRESTONE Good morning, Madam Chairman My name is George Firestone I serve as secretary of state for the State of Florida, and also as the State's chief elected historic preservation officer I want to thank you for the opportunity of appearing before you today to state my very strong support for H R 3558, the Abandoned Shipwreck Act of 1985 In addition to representing the State of Florida, I would like to submit statements on behalf of the National Conference of State Historic Preservation Officers, and also the Coastal States Organization, a membership of 35 States in support of this bill

It is also my understanding that the National Governors Association supports the thrust of H R 3558, which I believe further demonstrates the broad range of support on behalf of this bill, not only from bureaucrats but also from elected representatives

I would like to share some facts with you——

Ms MIKULSKI Mr Firestone, first let me just comment I appreciate you summarizing your testimony I understand you have a much lengthier testimony, is that correct?

Mr FIRESTONE That is correct That will be submitted

Ms MIKULSKI With unanimous consent, the entire Firestone testimony will be entered into the record Hearing no objection, it is so ordered Please proceed

Mr FIRESTONE Thank you, Madam Chairman I would like to share some facts with the subcommittee about the significance of Florida's historic resources which underscore the importance of this bill to our State Robert F Marx, in his book "Shipwrecks in the Americas" reports there are over 300 recorded shipwrecks off the State of Florida alone, between the years of 1521 and 1825 Since the mid-1960's, more than 30 historically significant shipwrecks have been salvaged in Florida waters

Several hundred thousand artifacts have been recovered from these shipwrecks, and I point out that the artifacts were not just gold, jewels or other items of monetary value They include such things as tools, weapons, rigging, pottery, cannons and cannonballs, items of historic value to Florida and really indeed the world

This encrusted sword handle is of little commercial value, although it has great importance to Florida and the Americas in terms of its value in reconstructing the early history of this hemisphere This tells us about the metallurgy, it tells us about the life-style, it tells us, indeed, about the people who were there, and we will send this up for the subcommittee to look at

Florida is well aware of the historical value of its artifacts, and we have committed ourselves to the conservation of these resources It is not enough just to discover and remove artifacts from

the sea To avoid the disintegration of many of these artifacts, they must undergo extensive conservation treatment

These are cannonballs and pulley blocks that have not been treated to conserve them for history The other ones have gone through a process of either chemical treatment or electrolysis, which have preserved them in perpetuity Without this treatment, that cannonball would be a matter of dust in a few years To this end, Florida has spent over \$2 million since the early 1970's in conserving its artifacts

The State's research and conservation laboratory in Tallahassee is recognized as one of the finest facilities in the world, and Florida displays its artifacts in numerous State and private museums We make them available for loan to other museums, for display and study, and have been the subject of several archaeological and historical studies By claiming title to its shipwrecks and artifacts, Florida has been able to manage them for the benefit of its historians, its citizens and its visitors

However, the Federal judiciary has in recent years held that the salvage principles of Federal admiralty law supersede Florida's ownership claims In 1981 the US district court for the southern district of Florida held, in the *Cobb Coin* case, that the salvor was entitled to exclusive salvage right over wrecks and cargo at nine different sites Florida spent more than \$300,000 of the people's money litigating the *Cobb Coin* case to safeguard its preservation program and to establish its ownership rights to its resources Fifteen additional admiralty arrests have been filed in Florida since *Cobb Coin*

Today this subcommittee is presented with a simple question, although the solution may be complex Who should manage abandoned shipwrecks within Florida waters, the State of Florida, which clearly has the expertise and commitment to do so, as evidenced by its actions over the past 20 years, or the Federal courts, which are clearly not equipped to take on such a task

I might point out that the separation of powers issue does apply If we are going to have three separate branches of government, the executive, judiciary and legislative, should the courts be administrators? Should they serve as the executive branch and administer the law? I think not HR 3558 resolves this question It recognizes that Florida and other States have title to and the responsibility—and that is the key word—responsibility for managing their historic resources There is no reason why Florida should manage all living and nonliving resources within our waters, except for shipwrecks

If you do not resolve this issue, and if the Federal courts are allowed to question Florida's claim to ownership, I feel the result will be the commercial exploitation of Florida's shipwrecks, with no concern for their historic value Florida would much prefer to use our limited resources to properly manage its abandoned shipwrecks, rather than to litigate needless admiralty cases

I know that concerns have been raised about the impact of this bill on sports divers and salvors Let me assure the subcommittee that Florida will allow sports divers and salvors reasonable and properly managed access to all shipwrecks We will continue to award exploration and salvor contracts to salvors, as has been done for the last 20 years Under these contracts the State would process

all the artifacts through its conservation laboratory and keep a representative sample of 25 percent of the artifacts for museums and curated collections

In closing, let me say that the timing of this bill is excellent, for in 7 years Florida, our Nation and our hemisphere will celebrate the 500th anniversary of the discovery of the New World. The shipwrecks and artifacts in Florida's waters are tangible documentation of our history. Through their preservation, future generations will be able to experience history through the exhibition of these artifacts. I urge your favorable consideration of H R 3558, because it will assist Florida and the other States in preserving this heritage.

Again in closing, I would invite members of the subcommittee to come to Florida, see our laboratories, see how we conserve artifacts for the future in perpetuity.

Thank you

[The prepared statement of Mr. Firestone follows.]

#### PREPARED STATEMENT OF GEORGE FIRESTONE, FLORIDA SECRETARY OF STATE

##### INTRODUCTION

I am George Firestone, Florida Secretary of State. Thank you for the opportunity to appear before this subcommittee in support of H R 3558, the Abandoned Shipwreck Act of 1985. As Secretary of State, I oversee the Division of Archives, History and Records Management. This agency is charged by Chapter 267 of the Florida Statutes to manage historical and archaeological resources on state-owned lands, including sovereignty submerged lands, and is granted title to artifacts from such sites. For the past six years, the ability of the state to carry out these responsibilities has been hindered by the application of federal admiralty law to historic shipwreck sites on state lands. More than any other state, Florida has been the focus of legal, archaeological, and commercial salvage activities surrounding historic shipwreck sites, and is in a unique position to appreciate the critical need for a law like H R 3558.

##### BACKGROUND

Florida has been in the forefront of historic shipwreck activity since the late 1940's when the first leases to salvage historic shipwreck material were granted by the Florida Governor and Cabinet. During the 1950's and early 1960's large quantities of treasure were recovered from Florida waters—the most famous being from the Spanish Plate Fleet of 1733 in the Florida Keys. In the 1960's in response to the concerns of archaeologists, anthropologists, and historians, the Division of Archives, History and Records Management was created and assigned the responsibility of managing and preserving Florida's valuable historic shipwrecks.

The Division worked with private salvors to collect information and artifacts through a program of exploration and salvage contracts for historic shipwreck sites on state-owned sovereignty submerged lands. These contracts allowed for commercial salvage of the shipwreck sites, but the Division acquired important archaeological information and a representative sample of the artifacts that were recovered under contract. This approach attempted to reconcile the conflicting goals of salvors and archaeologists.

Florida's program was seriously undermined in 1979 by the filing of a series of admiralty arrests in federal court, which placed into legal doubt the clear authority of all states to manage their submerged lands not only for historic shipwreck resources, but also for the wide range of other public uses of coastal areas. As a result, Florida remains in the forefront with respect to shipwreck sites, but now as a case study in the legal and management problems surrounding the dual jurisdiction of the federal courts and state agencies over historic shipwrecks on state lands.

##### STATE OWNERSHIP AND MANAGEMENT PROBLEMS UNDER ADMIRALTY JURISDICTION

Florida's greatest problem in attempting to manage historic shipwrecks is resolving the issue of who has title to and ownership of these archaeological resources.

Since the enactment in 1967 of Chapter 267, Florida Statutes, it has been the State's position that all historic shipwrecks abandoned on state-owned sovereignty submerged lands are the property of the people of Florida, with title vested in the Division of Archives, History and Records Management. However, as noted above, recent decisions of several federal courts held that federal admiralty law, applied to historic shipwreck sites, supercedes state law, and that such wrecks are properly under the jurisdiction of the federal admiralty courts. These courts have held, in essence, that historic shipwrecks are not owned by anyone and that any commercial salvor who raises shipwreck material may have valid claim to it. Aside from undermining state ownership, admiralty law encourages the expeditious salvage of artifacts for commercial reasons without regard for the historical significance of these resources.

Florida's problems are further complicated by the federal courts' failure under admiralty law to consider other factors central to the responsible management of public properties. For instance, once an admiralty arrest is filed, the shipwreck site becomes, in effect, a small outholding of federal authority within state submerged lands. Thus, the state's ability to manage its public lands for multiple use activities such as environmental protection and public use are hampered because federal admiralty law preempts the state's management laws. In such situations, the state is not able to manage its coastal resources based upon the consideration of the many competing demands such as recreation, commercial and sport fishing, residential use, protection of wildlife habitats, and other forms of public enjoyment. For example, a salvage operation may cause turbidity that damages a living coral reef, or a shipwreck might lie under a producing oyster bed, or be so close to public swimming areas that salvage would constitute a public hazard or nuisance, and yet the state's ability to protect these resources is hampered by the application of admiralty law.

While Florida should have the final authority to permit exploration or prevent disturbance of a historic shipwreck, it may be prevented from exercising that authority once admiralty law is applied. Florida should also have the power to decide who is best fit to do a particular job, and whether the site is to be excavated by a commercial salvor or a public institution, or even if a site has sufficient historic potential to warrant preservation. Again, the application of admiralty law prevents Florida from making these determinations.

The State of Florida, along with archaeologists, historians and preservationists, believes that significant historic underwater sites should receive the same protection that important upland sites now receive. Indeed, all significant cultural resources on public property warrant management and protection in the public interest regardless of whether they are on upland or submerged land sites. Admiralty jurisdiction over shipwreck sites runs against these principles and is analagous to allowing private contractors to arrest, dig up, and sell material from state-owned archaeological and historical sites.

Florida has a long history of admiralty litigation, some suits have been settled to the State's satisfaction and others have not. In an effort to protect the public's interest in the unique historical artifacts of a number of its shipwreck sites, the Florida Department of State in 1983 reached an out of court settlement with Cobb Coin Company, Inc. The settlement agreement, which covered nine areas in state waters upon which admiralty claims had been filed, resulted in a series of contracts between the state and Cobb Coin which have governed salvage of those particular sites since that time. The contracts are renewable at the salvor's option of life and incorporate a set of archaeological guidelines developed by both parties which take into account the differing goals of salvors and the state. While the system developed to implement these contracts is working well and will not be affected by passage of H R 3558, other cases have not been settled so satisfactorily.

Since 1983 at least fifteen additional admiralty arrests have been filed on historic additional admiralty arrests have been filed on historic shipwreck sites in state waters. These arrests further illustrate the problems inherent in dual jurisdiction. In some cases the state may not even have knowledge of the arrests, since the federal courts do not necessarily notify the state of the arrests or that salvage is underway. Additionally, many conflicts between state authority and federal court authority have been experienced in Florida. Admiralty arrests have been filed by new salvors on wreck sites already under state contract to other salvors, arrests have been filed on wreck sites for which state contracts have been requested but not executed, arrests have been filed on wrecks in one federal court that are already under arrest in another federal court, and arrests have been filed in state waters by salvors having no intent to apply for a state contract. Dual jurisdiction has resulted not only in confusion and loss of archaeological information on which future manage-

ment decisions should be based, but also in the considerable expenditure of state resources on attempts to resolve these needless conflicts

Furthermore, although some admiralty courts have recognized the importance of involving the Division of Archives, History and Records Management in the process of information collection and award of historically significant artifacts, others have not. Because each admiralty court rules individually, there is no consistency in management practices. And with each new ruling the Division is forced to implement different procedures and to deal with different interpretations given by salvors to the rights granted them by the federal courts. As a result, it has become increasingly difficult for the State of Florida to manage its historic resources, to collect information about salvage activities, and to make this information available to the public, other salvors, archaeologists and historians.

Of great concern to the State of Florida is the trend over the past three years of admiralty orders that are decreasing the State's involvement in salvage of historic shipwrecks, and the relaxation of requirements that archaeological information be properly collected and stored in a central location for future use. Because some admiralty courts do not recognize or require State involvement in their arrest orders, some salvors have refused to contract with or cooperate with the State. In such cases, the State's only recourse has been to assert its ownership in state courts, resulting in further confusion and expenditure of resources.

If Congress does not resolve this issue, and if federal admiralty courts continue diminishing state involvement, the final result will be commercial salvage of shipwreck sites with no concern for historical significance. The only winners in this jurisdictional conflict are the commercial salvors. The losers are the taxpayers who pay for these lawsuits, and more importantly, the citizens and visitors of Florida who are deprived of their use and enjoyment of historical resources on public lands.

#### H R 3558 AS A REASONABLE SOLUTION

The conflict that now exists can best be settled by granting title to historic shipwrecks to the states, as has been done with the other natural resources found on state submerged lands. Since the settlement of the Cobb Coin cases, Florida has demonstrated its commitment to responsible excavation of shipwreck sites following sensible archaeological guidelines.

Florida requests the clear authority to continue that process and views H R 3558 as the proper vehicle to achieve that goal. I support H R 3558 because it

- 1 Assigns the states the responsibility for managing their resources in their waters, including abandoned shipwrecks,
- 2 Transfers title to certain abandoned shipwrecks in or on state submerged lands to the proper owners, the states,
- 3 Exempts abandoned shipwrecks from federal admiralty law, thus clarifying the proper role of the states,
- 4 Affords meaningful recreational and educational opportunities to sports divers and provides for reasonable recovery of the abandoned shipwrecks, and
- 5 Fairly "grandfathers" from its provisions any suit filed before the date of enactment.

#### CONCLUSION

The present conflict between federal courts and state law must end. Without the enactment of H R 3558, Florida will be forced to continue to expend considerable time and money to resolve legal disputes brought on by conflicting federal admiralty law. Limited funds which could be used to locate, preserve, or recover archaeological and historical resources are being wasted on legal disputes that only Congress can settle.

You have before you the opportunity to resolve this conflict. Each abandoned shipwreck site represents much more than just a cache of cargo. Florida's objective is to preserve its heritage and marine resources for current citizens and future generations. To do these things we need your support for H R 3558.

**Ms MIKULSKI:** Thank you very much, Mr. Firestone. Those artifacts were extremely interesting. Could you tell us who is the gentleman accompanying you?

**Mr. FIRESTONE:** Mr. Thomas Thomasello is my chief cabinet aide and general counsel for the Department of State.

**Ms MIKULSKI:** The committee welcomes you too.

**Mr. THOMASELLO:** Thank you, Madam Chairman.

Ms MIKULSKI Now we would like to hear from Mr Robert Gray, the executive director of the Diving Equipment Manufacturers Association. He is accompanied by Mr Al Hornsby, the vice president of the Professional Association of Diving Instructors.

#### STATEMENT OF ROBERT GRAY

Mr GRAY Madam Chairwoman, thank you very much for inviting the Diving Equipment Manufacturers Association to testify before the House Oceanography Subcommittee on H R 3558.

Ms MIKULSKI Mr Gray, you have to talk more into the microphone, sort of like the breathing mechanism.

Mr GRAY Is this a little better?

Ms MIKULSKI That is a lot better.

Mr GRAY I thank you again for inviting us to testify today before the subcommittee. Before I summarize my written testimony, I would like to request that my full statement be inserted into the record as well as the written statement of Mr Al Hornsby, who is accompanying me today.

Ms MIKULSKI Hearing no objection, it is so ordered.

Mr GRAY Mr Hornsby represents PADI, the industry's largest diving certification organization. We also would like to request that letters of support from Scuba Schools International, the National YMCA Scuba Program, the Underwater Society of America, and California Wreck Divers be inserted into the record.

[The letters follow.]

1243 East Warner Avenue  
Santa Ana, California 92705

Telephone (714) 540-7234  
Telex 678400 PADI INT SNA



October 25, 1985  
AL8-G-17

Bob Gray  
DEMA  
P O. Box 217  
Tustin, CA 92680

Dear Mr. Gray

As per your request, PADI is pleased to support DEMA's position on the compromise shipwreck legislation

PADI's predominant interest in this issue is in protecting the rights of sport divers. It seems clear that the amended piece of legislation backed by DEMA satisfactorily protects the environment and historically significant underwater artifacts, yet also guarantees access to underwater wreck sites for these divers.

The diving community should acknowledge the efforts of all those involved in reaching this solution. Thank you for a job well done.

Sincerely,

A handwritten signature in dark ink, appearing to read "Al Hornsby", is written over a horizontal line.

Al Hornsby  
Vice President,  
Education and Public Affairs

AH/jc

SPENCER SLATE, NATIONAL CHAIRMAN  
YMCA Scuba Program  
51 Garden Cove Drive  
KEY LARGO, FLA. 33037

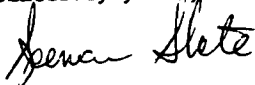
Robert L. Gray, Executive Director  
DEMA  
18002 Ervine Blvd.  
Suite 201  
Tustin, CA 92681

Dear Bob,

This letter will acknowledge our full support for H. R. 25: The Abandoned Shipwreck Act. You and your committee are to be congratulated for your work in rewriting this bill to protect our wonderful sport.

Please contact me if I can be of any further assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "Spencer Slate".

Spencer Slate, Chairman  
National YMCA Scuba Program

cc: file



# CALIFORNIA WRECK DIVERS, INC.

*to perpetuate nautical history through organized research, recovery, restoration & display*

November 23, 1985

Mr Robert Gray  
DEMA  
P.O. Box 217  
Tustin, Ca 92681

Dear Mr Gray,

The California Wreck Divers, Inc. brings the thrilling world of wreck diving to hundreds of Southern California divers each year. Since our founding in 1971, we have been one of the largest and most active dive clubs in the greater Los Angeles area. Following our motto "to perpetuate nautical history through organized research, recovery, restoration and display" many nautical artifacts have been recovered, restored and displayed for the enjoyment of others.

Membership is open to all sport divers and has reached some 300 active members within the Southern California diving community. Our organization is dedicated to the preservation of ship wrecks and their artifacts along the California and Oregon coast. The new legislation being purposed within House of Representatives, H.R. 25, would benefit both the historical archaeologist and the recreational sport diver alike. We therefore lend our support with DEMA to the passage of this strong legislation.

Sincerely,

William Wilson  
President

**Scuba Schools International**

2819 CANTON COURT FT COLLINS CO 80525 (303) 482-0883



October 23, 1985

Bob Gray, Executive Director DEMA  
P O Box 217  
Tustin, CA 92681

Dear Bob,

As a nationally recognized certifying agency since 1972 SSI has issued a significant number of diver certifications at all levels. This year alone SSI will certify many thousands of scuba divers. It is our belief that sport divers should be given access to abandoned shipwrecks for the purpose of sport diving and exploration.

We at SSI Headquarters have reviewed the draft changes to H R 25 (The Abandoned Shipwreck Act) and would like to see the revised bill supported by all the instructional agencies and DEMA.

Please take our views and comments with you to the subcommittee hearing on October 29. If SSI can be of further assistance in regard to this matter do not hesitate to contact me at SSI Headquarters, (303) 482-0883.

Best Wishes,

Ed Christini

H R 3558, Abandoned Shipwreck Act  
10-29-85



**UNDERWATER SOCIETY OF AMERICA**

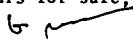
P PO Box 628, Daly City CA 94017

October 25, 1985

Bob Gray  
Dive Equipment Manufacturers Association  
PO Box 217  
Tustin CA 92681

The Underwater Society of America hereby acknowledges Bob Gray, Executive Director of DEMA, to inform the United States House of Representatives of the Society support of HR 3558, the 'Abandoned Shipwreck Act of 1985' and to submit the enclosed, written testimony

Yours for safe, fun diving,

  
George Rose, President

cc Ann Giesecke  
USA Executive Committee  
USA Regional Vice Presidents  
Representatives Bennett & Wright



**UNDERWATER SOCIETY OF AMERICA**

P O Box 628 Daly City CA 94017

October 25, 1985

Honorable Representative Wright  
State of Texas  
House Office Building  
Washington DC 20510

The Underwater Society of America is a not for profit, tax exempt organization comprised of skin/scuba divers organized through diving clubs into councils to represent the recreational diving community. ('An Invitation to Join' enclosed)

In April 1985 at the annual Board meeting of the Society, House Bill #25 was discussed extensively. The intent of the Bill was supported, but the wording of page 4, line 25 on 'advisory guidance' was found lacking. A motion was made and passed that if '...the wording of the Abandoned Shipwreck Act of 1985...' was revised the Society would then fully support the legislation (copy of motion enclosed)

The Executive Committee of the Society in consultation with the Regional Vice Presidents has reviewed HR 3558 and decided that this Bill satisfies the Board motion. Therefore, the Underwater Society of America gives full support to HR 3558.

The Society further acknowledges member, Ann Giesecke, and DEMA Executive Director, Bob Gray to make our supporting position known to you and the members of the House.

Yours for safe, fun diving,

*George Rose*

George Rose, President

cc Ex Committee C Rose, E Ralston, R Tucker  
Regional Vice Presidents  
Bob Gray  
Ann Giesecke  
Representative Bennett, State of Florida

**HR 25 ~ ABANDONED SHIPWRECK ACT OF 1985  
Resolution of Board of Governors April 1985**

The Underwater Society of America, as a representative of Sport Skin and Scuba Divers in the United States, at its annual meeting held in Miami, Florida on April 24-26, 1985, adopted the following with regard to the House Bill #25

Whereas the Underwater Society of America, as a representative of Sport Skin and Scuba Divers of the United States of America, supports the preservation of our National Maritime Heritage,

Whereas the Underwater Society of America supports the intent of the bill known as the Abandoned Shipwreck Act of 1985 (HR 25) but its present wording, generality and lack of binding guidance for the recreational exploration of shipwrecks by sport divers,

Whereas the Underwater Society of America specifically takes exception to the non-binding wording of page 4, line 25 'advisory guidance' and page 5, line 1 'such guidelines shall assist the states and the United States government,'

Resolved if the wording of the Abandoned Shipwreck Act of 1985 (HR 25) is revised to require establishment of binding guidance to the states and the United States government in the regulatory process providing for the recreational exploration of shipwrecks by sport divers, the Underwater Society of America shall then fully support this legislation.

Mr GRAY Each year, recreational divers discover hundreds of new wrecks and artifacts. These are items that would otherwise be lost to the ravages of time and decay, and by identifying the location of such objects and often doing much of the preliminary research, recreational divers open the door to follow up the archaeological community on those items with significant historical value. The result is that the public gains a history that would otherwise be lost if it weren't for recreational divers' involvement.

In fact, in 1981, an interesting reader survey conducted by PADI indicated that 53.3 percent of the respondents indicated that wreck diving was the diving activity they were most interested in and recently a skin diver magazine survey indicated that over 40 percent of the readers participated in wreck diving.

Our support of this bill is based on the understanding that the bill covers only those wrecks that are imbedded in coral, substantially buried under sand, needing excavation or eligible for listing on the National Register. Our support is based upon the fact that the bill, protect sport divers by specifically guaranteeing that once they find a historic wreck, salvors cannot get an admiralty court to restrict divers' right to dive and that the States will not restrict divers' rights to dive.

Our support is further based upon the fact that H R 3558 will probably enhance dive charter boat business, as wrecks that hold historic or pristine value will not be destroyed by salvaging and could be developed further as recreational sites. The recreational sport diving community is an \$800 million industry, and it employs approximately 30,000 people in the United States alone, and there are between 2½ and 3 million certified divers in the Nation. Wreck diving is by far the most popular diving specialty.

I will close now, anticipating questions, by expressing our industry's thanks to the committee members, the staff and subcommittee Members who have taken the time to address our concerns, and specifically our concerns have been that we have been caught between a rock and a hard place, between the salvors and the archaeologists, Madame Chairwoman. In fact previous legislation didn't even give a hoot about recreational divers as not a word was mentioned about the rights of divers in previous bills.

H R 3558, guaranteeing access, goes a long way toward assuaging some of our concerns. However, we would prefer specific guarantees of access. We would also prefer further definitions in the language such as the definition of imbedded, and the definition of "substantially buried," which in previous legislation has been defined as a shipwreck which is buried and needs excavating tools to get to.

We want a bill designed to specifically guarantee access to recreational divers. That is our greatest concern. I will close by saying once again that we have a million divers who are involved in wreck-diving activities. Shutting them off at the State level because the States don't have resources to accommodate their needs could seriously affect the total diving community.

I will close for now.

[The prepared statement of Mr. Gray follows.]

PREPARED STATEMENT OF ROBERT L. GRAY, EXECUTIVE DIRECTOR, DIVING EQUIPMENT  
MANUFACTURER'S ASSOCIATION

Madame Chairwoman Thank you for inviting the Diving Equipment Manufacturers Association to testify today on proposed legislation that is very important to the recreational sport diving community, as it affects their accessibility to dive on historic shipwrecks

Each year recreational divers discover hundreds of new wrecks and artifacts These are items that would otherwise be lost to the ravages of time and decay By identifying the location of such objects and often doing much of the preliminary research, recreational divers open the door to follow-up by the archeological community on those items with significant historical value The result is that the public gains awareness of a history that would otherwise be lost, were it not for the recreational divers' efforts

As the number of recreational divers grows, so will the number of individuals whose enthusiastic explorations lead to the location and discovery of new wrecks and artifacts In a 1981 Diver Interest Survey conducted by PADI, 53.8 percent of the respondents indicated that wreck diving was the diving activity they enjoyed most And over 40 percent of readers responding to a 1985 Skin Diver Magazine survey actually went wreck diving in the previous 12 months Wreck diving is by far the most popular specialty diving activity

As background, DEMA represents U.S. producers of sport and commercial diving products We are an 800 million dollar industry in total, employing approximately 30,000 people in the U.S. This includes, but is not limited to 17,000 instructors, 4,000 retailers and their employees, 6,000 employees of manufacturing companies, and 3,000 employees of suppliers, certifying agencies/destination operators

This equates to a tax-base contribution in excess of \$100 million There are approximately 3 million certified divers in the United States And PADI, whose Director of Education and Public Affairs has accompanied me today, represents more than one-half of these divers as their training organization Every year, more than 400,000 new divers are certified, and last year, 41.3 percent of all divers participated in wreck diving activities

Recreational sports diving is growing at a compounded annual rate of 12 percent for equipment sales and an astonishing 20 percent in participation

The Diving Equipment Manufacturers Association is the primary organization that links producers, sellers, instructors and suppliers of equipment and recreational diving opportunities together, to promote the safety and growth of the sport As wreck diving is the second most popular activity of sports divers, we will be pleased to support the newly-introduced legislation if its language is changed to specifically guarantee sport divers' access to certain abandoned wrecks, while the historical value and environmental integrity of these sites remain protected These abandoned shipwrecks are the resources that enable sport diving to continue to chart a course of growth We agree that the limited number of wrecks and sites, that this new bill covers, must be conserved today, if future generations of divers are to reap benefits of enjoyment tomorrow

This recommended change of language is central to the sport diving community's support for the new legislation Previous bills giving States blanket title to own and control certain abandoned wrecks were thought to catch the sport diver between the rock and the hard place, and hold the potential to deny sport divers, who find the vast majority of wrecks, access to explore and dive on them

While the purpose of previous bills was to settle a jurisdictional conflict between Federal and State Governments' ownership rights, resulting from court cases centering on the right to recovery, the jurisdictional fight opened a Pandora's Box of fear among sport divers Miscommunication by all parties about the intent of the bill stimulated our fears, as did confusion that equated sport divers with salvors Much of this miscommunication will be corrected, and the intent of the bill clarified by such language creating a more specific "Right of Access" provision

The Diving Equipment Manufacturers Association and PADI, the largest sport diving certification agency, believe that H.R. 3558, as amended, can be a compromise piece of legislation that will create a balance between the rights of sport divers, archeologists and private recovery groups in their demand for access to certain abandoned wrecks A clarification that multiple-use demands must be met by States in managing the wrecks and their sites goes far in alleviating the potential for future court cases, the burden of which this bill seeks to lessen

We are happy to have the opportunity in working with Committee staff to achieve a bill that the sport diving industry could endorse

The sport diving community would look forward to developing a program with the States to find, explore, study and help recover certain abandoned shipwrecks. There are diving clubs and individuals across the country that could lend their support to these efforts, and these people are now working with PADI and dive store retailers to familiarize themselves with study techniques that would enhance their value to marine archeologists, who need the numbers that sport divers can command to help with the exploration of wrecks that they have on their rosters to locate. The sport diver also is a channel for States and private recovery groups to utilize in locating wrecks that have possible historical value.

In closing, Madame Chairwoman, the members of the sport diving community, as represented by DEMA and PADI, can support and endorse H.R. 3558, if it can be amended so as to accomplish the specific goals we have defined. Thank you, we are prepared to answer any questions from the Committee.

Ms. MIKULSKI: Thank you very much, Mr. Gray.

Mr. Hornsby, I presume your testimony parallels that of Mr. Gray, am I correct?

Mr. HORNSBY: Yes.

Ms. MIKULSKI: We would like to, the committee and I, to thank the various diving interests for their cooperation on this bill, and their spirit in trying to arrive at some type of framework, rather than just automatically being against it.

We feel that recreational divers play a very important part in our society. Not only are you a source of economic activity, which you so well explained in clarifying your testimony, but we also know that we turn to you at times of emergency. We know that you often are a source of volunteerism when we need to search for drowning victims, when we need to have to perform other public safety measures in our community.

We live on the Chesapeake Bay. We have a variety of times where, both in our harbor and in our bay, we have turned to recreational divers to locate either submerged items or to have to have the rather ghoulish job of searching for drowning victims.

You have always stepped forward, whether it is looking for somebody in a quarry or looking for somebody in the bay, and the whole professional approach of working with public safety officials from this gentlewoman from Maryland, is very, very, very much appreciated.

We could not have a Government staff ready and available. You are kind of like the citizens aquatic national guard, and we do appreciate the role you play.

Mr. GRAY: Thank you.

Ms. MIKULSKI: Having said that, now we would like to turn to Dr. George Bass of Texas A&M, who I know in many ways has pioneered underwater archaeology, and we are most eager to hear your testimony, Dr. Bass.

#### STATEMENT OF GEORGE BASS

Mr. BASS: Thank you. Before I begin my personal testimony, I would like to let the committee know that the following organizations wish to be associated with my expression of support for the Abandoned Shipwreck Act: Society for Historical Archaeology, Advisory Council on Underwater Archaeology, Society of Professional Archaeologists, Archaeological Institute of America, National Trust for Historic Preservation, American Association for State and Local History, American Association of Museums, Council of Amer-

ican Maritime Museums, Association for Field Archaeology, Society of American Archaeologists, and from my own State, Texas Antiquities Committee and the Texas Historical Commission

Ms MIKULSKI Thank you very much

Mr BASS I am going to have to talk very fast, as a South Carolinian, because I have heard some new things here that I want to add to what I have written down

Ms MIKULSKI Dr Bass, you don't have to talk fast

Mr BASS I have been setting my diving watch

Ms MIKULSKI We don't want you to go under either We really want to hear your testimony If you also have additional comments, as I said, and I am sure all of you will, upon reflection, this committee record will be open for additional comments from those witnesses who have testified So Like Roy Rogers said, "Slow down"

Mr BASS My name is George Bass I first studied at the Johns Hopkins University where I received an M A in Near Eastern archaeology I hold a doctorate in classical archaeology from the University of Pennsylvania

I am now distinguished professor of anthropology at Texas A&M University, and am founder and Archaeological Director of the Institute of Nautical Archaeology, an institute which during the past decade has conducted shipwreck excavations on four continents

I have been in charge of more than 10,000 deep decompression dives I have published 5 books and approximately 100 articles, both popular and scholarly on underwater archaeology I and my team have published nine articles in the "National Geographic Magazine" That is why I am here to speak to the National Geographic Society My popular books, one a Book of the Month Club selection, have been translated into seven languages

Our films have been seen on television around the world We are now spending close to a half million on a new one to show exactly what archaeology is Being the first person to have excavated an ancient shipwreck in its entirety on the sea bed, in 1960, I, with my team, have set the standards for underwater archaeology and have developed many of its techniques, including techniques later used by the military and by other marine scientists

I should add that even when I was a graduate student, I was the first person to launch a privately built and purchased submarine in the United States That preceded the Alvin, Aluminaut and all the rest It was built by General Dynamics Only in America could a graduate student go out and raise the funds to do that

Society has seen fit to pass laws to protect the physical remains of its past Gone are the days when collectors obtained permits from a sultan to gather antiquities from the Ottoman Empire to sell for free enterprise and colonial rulers took what they pleased No longer can farmers knock down ancient marble columns to burn for lime in the name of free enterprise

Society condemns plundering of Maya tombs and American Indian mounds for private gain Is it not fitting that in this century King Tut's treasure was excavated by archaeologists, and kept together as a collection, not only for continued study, but for the enjoyment of the millions of people who have seen it in the United States and elsewhere?

An archaeological site in a jungle, on a mountain top, in a desert, or underwater, is an archaeological site. Underwater sites are protected as such in Europe, Africa, Asia, and Australia. Why not in the United States?

Archaeology has little to do with the unearthing or ownership of artifacts. It is a search for knowledge and truth, and an attempt to conserve our past for the benefit of all. My institute—and I am sorry Mr. Shumway is going to miss this statement—has located 73 ancient wrecks in the Mediterranean in the last few years, along one small part of the Turkish coast, and we had plenty of incentives to do it. The incentive is the search for knowledge. We have raised treasures of gold, silver, and glass worth millions of dollars. We want to own those treasures no more than astronomers want to own the stars.

Their excavation is the simplest, least expensive part of our work, even when we are working 145 to 170 feet deep as we are daily right now in Turkey. Our group spends 2 years on the conservation, restoration and interpretation of artifacts, including entire wooden hulls, for every month we dive, whether in the Mediterranean or Caribbean. Thus a salvage group with one or two archaeologists on its staff cannot conduct serious archaeology any more than a large hospital with one or two physicians on its staff can practice serious medicine, and an amateur archaeologist has no more business directing an excavation than an amateur dentist would have practicing dentistry.

Archaeologists study as long as do physicians, but are less well paid, and I know something about the American spirit, too. Several of us sold our homes, furniture, our cars and set out to found an institute of nautical archaeology. I was the president, making \$13,000. We had people with families making \$5,000 a year to put our institute together and it wasn't paid for by the Federal or State governments, and we went out and found those wrecks.

Archaeologists have lost their lives both on land and under water. Yet this gives them no claims to their finds, which go to museums usually more attractive and informative than the museums of treasure hunters. The latter lack proper conservation facilities for historic artifacts of little monetary value.

The public visits Mount Vernon and the Alamo, but we would not allow an entrepreneur to dismantle either for private gain, so when I hear people say "we will give 25 percent to the State," it would be really nice to get 25 percent of the Alamo. Similarly, historic shipwrecks should be preserved for the pleasure of visiting divers. Why should a salvor be allowed to dismantle one of John Paul Jones' or LaSalle's ships to sell or own for his own profit? A historic monument, regardless of where it is found, is a historic monument. It should be recognized as such by law.

I have some comments that I don't feel the admiralty law is meant to compete with archaeological law. I am not a lawyer, and so I won't say anymore about law to Mr. Horan, and I will just talk about what archaeology is. I feel archaeology itself has not been well addressed today. The legislation that States have to protect their archaeological resources is already in place.

No State, as far as I know, prohibits sport diving on historic shipwrecks. In fact, when we are talking about the recreational

diver, the President of our institute joined me as a recreational diver, and several—I would say more than half of my staff—joined me as recreational divers, so we know the place of recreational diving

Thank you very much

Ms MIKULSKI Thank you, Dr Bass I thought that your testimony was quite comprehensive Your entire testimony will be entered into the record

[The prepared statement of Mr Bass follows ]

#### PREPARED STATEMENT OF GEORGE F BASS

I wish to express my support for H R 3558

I have some expertise in this area I did my undergraduate and M A work in Near Eastern archaeology at the Johns Hopkins University, and hold a doctorate in Classical archaeology from the University of Pennsylvania, where later I was an associate professor as well as a curator in the University Museum I am now Distinguished Professor Anthropology at Texas A&M University, and am founder and Archaeological Director of the Institute of Nautical Archaeology, an institute which during the past decade has conducted shipwreck excavations on four continents I have held the Geddes-Harrower Chair of Greek Art and Archaeology at Aberdeen University in Scotland, and have been a Visiting Scholar at Cambridge University in England

I am perhaps the only person to have directed both land and underwater archaeological excavations, including numerous shipwreck excavations and surveys in Turkey, Italy and the United States, these include the three oldest shipwrecks ever excavated, dating from between 3,600 and 3,200 years ago I have shared the results of my work with the public by publishing five books and approximately 100 articles, both popular and scholarly, on underwater archaeology, I and my team, for example, have published nine articles in the "National Geographic magazine, and my popular books, one a Book-of-Month Club selection, have been translated into seven languages Our films have been seen on television around the world, we now are spending close to half a million dollars on one that we feel will explain to the public exactly what underwater archaeology is I have given hundreds of popular lectures around the country, as well as abroad

Being the first person to have excavated an ancient shipwreck in its entirety on the seabed, in 1960, I with my team set the standards for underwater archaeology and developed many of its techniques, these include techniques later used by the military and by other marine scientists, such as communications by underwater telephone booth, a method of mapping the sea bed by stereophotogrammetry, a method of mapping the sea bed from a submarine, a submersible decompression chamber requiring no support vessel, and improved techniques of conserving and replicating ancient iron objects My team was the first to discover an ancient shipwreck by means of a sonar survey And I ordered the construction of the first research submarine launched and sold by an American manufacturer (1964) Additionally, I have been in charge of more than ten thousand, deep, decompression dives

I initiated the first scientific excavations of ships of the American Revolution (an American ship in Maine, and a British ship in Virginia) One of my students Michael Katzev, was the first to actually raise and restore and ancient hull from the Mediterranean, and another, Donald Keith, at present is directing the first scholarly excavation of an early shipwreck in the Caribbean We have trained the leading underwater archaeologists of Australia, Turkey, and Israel

For such efforts, the United States Jaycees in 1967 chose me one of the Ten Outstanding Young Men in the Nation, and in 1979 I was awarded the John Oliver La Gorce/National Geographic Society Gold Medal for advancing the science of nautical archaeology

Society has seen fit to pass laws to protect the physical remains of its past Gone are the days when collectors obtained permits from a sultan to gather antiquities from the Ottoman empire, and colonial rulers took as spoils what they pleased No longer can farmers knock down ancient marble columns to burn for lime in the name of free enterprise Society condemns plundering of Maya tombs and American Indian mounds for private gain

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enjoyment of the millions of people who have seen it in the United States and elsewhere?

An archaeological site in a jungle, on a mountain top, in a desert, or under water, is an archaeological site. Underwater sites are protected as such in Europe, Africa, Asia and Australia. Why not in the United States?

Archaeology has little to do with the unearthing or ownership of artifacts, It is a search for knowledge and truth, and an attempt to conserve our past for the benefit of all. My institute has located 73 ancient wrecks in the Mediterranean alone, and has raised treasures of gold and silver and glass worth millions of dollars. The excavation of those treasures is the simplest, least expensive part of our work, however, even if we are working 145 to 170 feet deep. We spend two years on the conservation, restoration and interpretation of artifacts, including entire wooden hulls, for every month we dive, whether in the Mediterranean or Caribbean. A salvage group with one or two archaeologists cannot conduct serious archaeology any more than a large hospital with one or two physicians on its staff can practice serious medicine. And an "amateur archaeologist" has no more business directing an excavation than an "amateur dentist" would have practicing dentistry.

Archaeologists study as long as do physicians, but are less well paid. They have lost their lives, both on land and under water. Yet this gives them no claim to their finds, which go to museums usually more attractive and informative than the museums of treasure hunters, which lack proper conservation facilities for historic artifacts of little monetary value.

The public visits Mount Vernon and the Alamo, but we would not allow an entrepreneur to dismantle either for private gain. Similarly, historic shipwrecks should be preserved for the pleasure of future generations of visiting divers. Why should a salvor be allowed to dismantle one of John Paul Jones' or La Salle's ships to sell or own for his own benefit? An historic monument, regardless of where it is found, is an historic monument. I should be recognized as such by law.

Opponents of H R 3558 base many of their arguments on erroneous assumptions or, in some cases, myths of their own manufacture. I would like to correct some statements I have read over the years.

1. Treasure-hunters claim that wrecks are endangered by hurricanes and other storms unless excavated ("salvaged") soon.

This is not true as a leading wave expert from the Oceanography Department at Texas A&M University has demonstrated. I have found that wrecks, even shallow ones in the Caribbean, have stabilized at some point in the past and have suffered little additional damage from subsequent centuries of storms.

2. Treasure-hunters claim that the only way to pay for the enormous expense of underwater salvage is through the sale of artifacts.

This totally ignores the first-rate excavations I and my colleagues have conducted on four continents during the past 23 years, without the sale of the tiniest scrap of pottery or wood, these projects have included the expensive conservation and restoration of wooden hulls, which treasure-hunters have never paid for. Archaeological colleagues in France, Australia and other countries are similarly doing first-rate work without selling artifacts, shivers of wood from the *Mary Rose* in England admittedly are being sold as souvenirs to help pay for its salvage and conservation, a unique exception to the rule.

3. Treasure-hunters have claimed that there is no need to excavate carefully the wooden hulls of New World shipwrecks because, unlike those in the Mediterranean, they are not well enough preserved to warrant care, being shallow and found in areas of high waves.

Again, untrue. Treasure-hunters claim this less often now that I and my colleagues have begun working in the Caribbean, where I have seen hulls only fifteen feet deep in high energy zones as well preserved as any I have worked on in the Mediterranean 100 more feet deep.

Unfortunately, I still see films of well-preserved timbers being scattered brutally in the Caribbean by prop-wash deflectors used routinely by treasure-hunters to search for salable artifacts.

4. Treasure-hunters have claimed that there is no need to excavate carefully hulls of New World shipwrecks because detailed plans of early Spanish ships exist in Spanish archives.

Another myth. We know more about how Greek and Roman ships were built than we do about how the ships of exploration, like those used by Columbus, were built because hulls have been excavated scientifically in the Mediterranean instead of being torn up by the Treasure-hunters.

5. Treasure-hunters are said to deserve all the profit they can make because they risk their lives and have lost team members.

I am dismayed that nearly every article I have read on the controversy between treasure-hunting and archaeology has emphasized the lost of life of treasure-hunters, but not one has mentioned the death of the most promising nautical archaeologist in the world from a diving accident four years ago, he died only weeks before receiving a doctorate from Cambridge University and before the publication of his second book. Others of us have seen friends and colleagues crippled by bends and embolisms, but we believe our daily risks are totally irrelevant to any rights to sell what we excavate.

6 Treasure-hunters state that they should salvage old ships because archaeologists haven't gone out and found them and excavated them and have no record of successful work in the New World.

Treasure-hunters are correct that American archaeologists do not have a good record of survey, excavation and publication in their own hemisphere. However, there were no significant archaeologists in Greece and Turkey 200 years ago, and I believe we are fortunate that not all Greek tombs were robbed or that not all Greek temples were burned for lime, as happened to some. We must think of the future, one day there will be sufficient archaeological expertise in this hemisphere to do the job—if any worthwhile wrecks remain.

7 Treasure-hunters have claimed in the press that they developed 90% of the equipment used for underwater excavation.

Treasure-hunters did not develop diving equipment, underwater cameras, air-lifts, underwater dredges, lifting balloons, magnetometers, sonar, metal detectors, underwater mapping devices, conservation equipment, etc., etc. What else do they use? They may have invented the prop-wash deflector. Is that 90%—or even 20%?

8 The archaeologist employed by one treasure-hunting firm suggests that archaeologists by law be given six months to study artifacts before they are sold, to insure that no historical or scientific knowledge is lost by treasure-hunters.

This shows the appalling ignorance of a well-known archaeologist who works for treasure-hunters. As stated above, it takes many, many years to conserve artifacts from shipwrecks. We have one team of conservators working year round in Turkey on glass artifacts excavated between 1977 and 1979, and another team working year round on the restoration of the hull from the same wreck, a third team spends half of each year on the conservation of iron from the ship. This work, and the concurrent recording by drawings and photography, will continue for years to come. What we would have learned about this ship would be pitifully small had we sold the artifacts after six months.

The sixteenth-century artifacts our institute recovered during one and a half summers of excavation in the Caribbean have been undergoing mechanical, chemical and electrolytic treatment for several years, the job, in spite of a full-time staff of half a dozen technicians, will require several more years.

9 Treasure-hunters say there is no harm in selling duplicate artifacts.

Using newly devised techniques, we recently began the long-term restudy of seemingly identical artifacts we excavated more than twenty years ago, and have learned enough to write new chapters and articles on them. In fact, this restudy is causing us to revise some of our conclusions about the nature of Byzantine maritime commerce. We were able to make this new study only because the artifacts are still stored together in a museum instead of having been scattered through sales.

10 Treasure-hunters say that archaeologists can speak easily about leaving their finds to the state or nation from whose waters they were excavated because archaeologists don't deal with "real treasure."

Archaeologists, too, find gold and silver, and priceless classical bronze statues. One glass bottle from the ship we excavated between 1977 and 1979 was appraised as being worth about \$65,000 if it were for sale, we have 80 intact glass vessels from that single wreck, with the fragments of perhaps 10,000 more, which our conservators are piecing together. More recently we have excavated gold and silver jewelry from a wreck that sank at the time of King Tut, 3,400 years ago—who can guess the price of the gold chalice we found there. Surely this is treasure.

11 The press has called treasure-hunters good amateur underwater archaeologists, more competent than many professional archaeologists with university degrees.

Who would go to an amateur brain surgeon? There are well meaning people who claim cures for cancer and other diseases, sometimes reported in the press, but society does not allow them to practice without proper credentials. Amateur archaeologists have an important role to play, but mainly in locating wrecks and in assisting professionals to excavate them. I have never worked without amateur divers on my staff, the president of our institute, in fact, first joined my team as an amateur diver with no archaeological training.

12 There are thousands of shipwrecks, enough to go around Why should archaeologists have them all?

There are thousands of land sites Why not give them to pot-hunters? Why not let some "free-enterprise" treasure-hunters have some Egyptian pyramids and half the classical temples on earth—there are plenty to go around

In fact, wrecks are disappearing at an alarming rate I have conducted underwater surveys off the Italian coast, and found nothing, shipwreck site after shipwreck site had been stripped bare by souvenir hunters and professional looters Some of these sites once had held remains of Phoenician ships, so the world has been thwarted in attempts to learn how the most famous of ancient mariners constructed their vessels—and future generations of Italian amateur divers have lost the opportunity of even seeing ancient shipwrecks American amateur divers led the fight to protect coral reefs and to protect fish from scuba-equipped spearfishers, and I am delighted to learn that they now are fighting to protect wrecks for the benefit of the diving community and those who follow I would suggest that diving organizations might take it upon themselves to help establish and preserve underwater archaeological parks

Anyway, archaeologists don't want to "have" wrecks, which we believe belong to the public as do historic monuments on land Our job is to understand them and to disseminate knowledge about them through appropriate channels, both to other scholars and to the public

13 Treasure-hunters deserve what they get because they are little guys who trying to make good under the free-enterprise system, not protected by the umbrella of government and academic institutions

When I founded the Institute of Nautical Archaeology a dozen years ago, I made \$13,000 a year as president, the vice-president made \$8,000, and our only other staff member (who held an M S in marine science) made \$3,000, our next employee, with a wife and two teen-age children, joined us at \$8,000, and our next two, one with a Ph D in physics, signed up for \$5,000 Some went through their life savings and sold their homes We were gambling, but we found people who were willing to invest in our search for knowledge We provided a good product, so our institute grew and prospered I know what it was like being a little guy trying to make good, but I was never tempted to plunder and archaeological site

I do not believe archaeologists base their case on false claims

In summation, there should be no distinction between the protection of historic or archaeological sites on land and historic or archaeological sites under water Further, there is no distinction between the archaeology of the Eastern Hemisphere and that of the Western Hemisphere I have directed both land and underwater excavations in both hemispheres, so these statements are based on personal experience

I believe that I speak for the vast majority of archaeologists in urging passage of H R 3558

I am not a lawyer I have no legal training Thus I cannot address the question of admiralty law I do not believe, however, that admiralty law was intended to deal with antiquities, but to deal with emergency, economic, and life-threatening situations Admiralty law looks at peril to goods, amounts recovered, speed of recovery, and the risks taken by salvors to determine awards for salvors None of this had to do with historic monuments, and thus H R 3558 should not effect admiralty law In fact, the only threat to most historic shipwrecks is their salvage Once salvaged, a site is destroyed forever, which is why archaeologists take such pains to record, conserve and publish their excavations

On the other hand, I believe that all states already have legislation and programs to protect historical archaeological resources, and thus are well suited to manage historic shipwrecks in their waters As far as I know, no state prohibits sport diving on historic shipwrecks Some provide in some way for compensation for recovery activities by private parties I, personally, see no reason why private parties should profit at all from our heritage, but each state, under H R 3558, would be free to decide what is in its best interests in that regard

I have, in the process of duplicating this testimony, just received a letter from Senator Paula Hawkins stating that without "free enterprise" the number of new wrecks to protect would be negligible, for there are neither State nor Federal Government funds to underwrite expensive searches necessary to locate shipwrecks Earlier in this testimony, I pointed out that we located seventy-three ancient shipwrecks in Turkey in the last three years Only recently have archaeologists begun searching in the Caribbean, and already we have located a significant number Senator Hawkins' statement, therefore, does not reflect the reality of the future, for pri-

vate funding for true archaeology is increasing rapidly as is the number of nautical archaeologists

Ms MIKULSKI All of this was so comprehensive, I am trying to sort out what is the best way to proceed

Mr FIRESTONE, do you support this bill. It essentially turns the managing of historic shipwrecks over to the States. You heard, in earlier testimony, the idea of some type of national law. Also it has been said that there are States who don't necessarily have the resources to do it.

Florida is certainly geared up considerably, has spent quite a bit of local taxpayer's money. Would you prefer to see a kind of States rights bill? Do you think that there should be a national bill that would set national standards, but leave States to develop their own frameworks?

What are your thoughts on that?

Mr FIRESTONE Madam Chairman, I have no problem with the very basic framework being Federal law, but I believe that diversity of needs is part of our Federal system. Clearly the fact that Florida was on the trade routes for the Spanish galleons, puts it in a little different position than the areas in the east coast that were more involved in Civil War, Revolutionary War periods, so we are dealing with different kinds of artifacts, different dates in history, different volumes and breadths.

As I indicated in my testimony, there have been over 300 shipwrecks identified in Florida alone. Therefore, our thrust would have to be considerably greater than perhaps some other States that have a lesser amount of shipwrecks in their waters.

Ms MIKULSKI Mr Gray, in the past, the divers have been adamantly opposed to any shipwreck legislation. Is there any reason you have shifted your opinion?

Mr GRAY Madam Chairwoman, I would like to address the problem of miscommunication. In the beginning there was an extreme lack of information relative to the legislation. We were, and still are somewhat fearful of the fact that wreck divers may not be allowed to dive on wrecks even though previous bills were written with the potential to gain access. H.R. 3558 as amended will give us that access to wrecks, and recreational divers will be able to continue with exploration and study of wrecks.

Sport divers discover more than 75 percent of all shipwrecks. One of the things that happened was that there were well organized attempts to depict previous legislation as antediving, and those attempts, of course, resulted in the diving community becoming extremely negative to the proposed legislation.

Thus we found ourselves in a very tenuous position. Several of our board members came to Washington, DC, in May to meet with Congresspersons, Senators, staff, and committee members, in order to obtain a better understanding of the bill, where it was going, and its purpose as this information really had never been disseminated to our industry.

We were also very fearful that "noise" we were hearing, could affect us and there were calls for no legislation being better than bad legislation. Even today there is a strong desire for no legislation as opposed to legislation that adversely affects recreational divers.

We actually want and we feel we should have a bill that can specifically guarantee access to wrecks, and with that specific guarantee we can support the bill

Ms MIKULSKI Thank you Mr Hornsby, did you want to add anything? We don't want you to be the silent partner in this testimony?

Mr HORNSBY I think the point was well made by Mr Gray, that recreational divers are somewhat caught in the middle between some forces here The wrecks typically of value to salvors tend to be buried It takes expensive sophisticated equipment to locate and work those wrecks Sport divers don't typically have those wrecks available to them

On the other hand, if the archaeological community were to put in very restrictive guidelines that of themselves could prevent access to these wrecks by sport divers, the effect would be equally bad There is also a situation where the ability to place an admiralty arrest on a wreck site also prevents access to the everyday sport diver, and this is the difficult situation that our particular community is put into, we must try to find the best way to guarantee for our divers that they do not have access prevented from whichever end it may come The position that Mr Gray stated in his opening testimony accurately lays out the problem we face

Ms MIKULSKI Thank you Dr Bass, you have heard so much of the testimony today We would particularly like to thank you and those associated with you for the sacrifice that you have made in this field I feel like I am talking to a kind of an underwater Chuck Yeager here, who had the "right stuff" and had to mortgage his home He wasn't paid by the Air Force to go out and look for it

We are struggling here, as you have heard, with how to lay out a contemporary framework, balancing a variety of interests Dr Ballard talked about findings in the high seas in international waters We are talking about historic shipwrecks from a wide range of areas, from those carrying enormously valuable cargo to military vessels like the *Monitor* and the *Merrimac*, whose value is its place in history and its architecture, rather than what it carried It carries history with it

At the same time this bill is oriented to how a State could manage its resources I know that you are supporting this bill Do you think that there are any additional frameworks that we should consider For example, a national bill that would set national standards, but leave it to each State to build its own additional framework, because of the enormous different kinds of trade routes? Out of Maryland they carried rum, cotton, romance and rebellion Out of Florida, they carried the Spanish trade routes

I would think that in New England the cargo might be less valuable, but the history is there Do you have any additional thoughts on this?

Mr BASS I have to base my answer on my experience in archaeology, and I am perhaps the only archaeologist alive who has directed excavations both under water and on land

Ms MIKULSKI That's right

Mr BASS And so I find it very difficult to differentiate between historic monuments on land and those beneath the water I know some on land are national monuments, others are State monu-

ments My feeling all along has been that shipwrecks as archaeological sites should be treated exactly like historic houses or Indian mounds or burials, and if the States have laws to protect their sites on land, those laws can apply under water

There are national laws that protect some sites on land There are national monuments I don't know I hadn't thought about this before I am bothered by it I simply thought that States could handle it with their existing legislation

Ms MIKULSKI So you think this legislation would be an important step in establishing this concept, even though later on we might need additional legislation

Mr BASS Yes, I do

Ms MIKULSKI Mr Shumway

Mr SHUMWAY Mr Gray, I wanted to just pursue for a moment your answer to Congresswoman Mikulski's question As I read this bill—and I read it as you were discussing your impression of it—section 4 and section 5, for example, contain a congressional declaration of support for access to these wrecks by sport divers, but I see no language at all that would provide the kind of guarantee, and I think that is your word, or at least Mr Hornsby's word, that you seem to be so assured of

It seems to me that it is really placed in the context, if you read section 5, an advisory council recommending, but I really don't read from the bill the same kind of assurance that apparently you are reading into it I am just wondering, am I misguided or do you see something that I don't see?

Mr GRAY No Actually, what we have said is that we want specific guarantees

Mr SHUMWAY And where are they in this bill?

Mr GRAY They are not at present in H R 3558 What we are saying is we would like to have the bill amended not only to add further definitions but that guarantees are more specific

Ms MIKULSKI If the gentleman from California would yield

Mr SHUMWAY Sure

Ms MIKULSKI We would welcome from Mr Gray and Mr Hornsby a letter, a memo outlining specifically their changes, one for our review, and then second, for additional discussion This is a hearing and it was meant to be what it is, to provide an airing, a viewing, and so on We have got a lot more homework to do on this bill, and we recognize that

Mr GRAY Madam Chairwoman, may I make another point?

Ms MIKULSKI Certainly

Mr GRAY The concept of national minimum archaeological standards, is very interesting to the diving community particularly where we can establish a baseline States could build upon it even though there would be variances relative to the location and the integrity of the archaeological find

I think once we establish this baseline we can implement a sound program The Advisory Council however is another problem in that I don't know and I wonder who does, how many underwater archaeologists are in the United States Could they examine 200 shipwrecks in a year? Are there that many qualified underwater archaeologists to examine them?

Our concerns are that if these shipwreck could not be examined, how would the States manage them until they could be studied, and it be determined whether they are historically significant. There are still other questions that the diving community would like to have answered. We have to advise our constituency that we are still concerned about certain areas of the bill and we are working to develop language and definitions to eliminate the vagueness that is so prevalent in H R 3558. We are looking forward to furnishing the diving industry information relative to exactly how the recreational dive will be affected by this legislation.

Mr SHUMWAY Thank you, Mr Gray

Mr Bass, and then I will have a question for Mr Firestone

I have a difficult time seeing how it is that States could give better management to this particular problem or these wrecks offshore than the Federal Government. One is an entity of Government and so is the other, and it seems to me that they both have interests and they both would be prepared to deal with the problem either in a way that might be helpful or might be a great deal of hindrance. But from an archaeological point of view, could I just ask you, would it be adequate if we established some kind of Federal regulatory or judicial guidelines that pertained to salvaging practices and required that they conform to methods which would preserve the historical and cultural significance of a shipwreck?

In other words, why do we need a law enacted which gives states title to these shipwrecks? Couldn't we accomplish the same kind of preservation with the same kind of concern which you have expressed by federal regulatory standards or judicial guidelines?

Mr BASS May I consult with the person who should be sitting here, but there was no room at the table, my colleague from SMU, Professor Wendorf

Ms MIKULSKI Where is he?

Mr BASS There was not enough room at the table

Ms MIKULSKI Move over. This is bad. This Congresswoman would never keep a Texan from the table.

Mr BASS Again, I have to answer, to me archaeology is archaeology. I work sometimes on land and sometimes under water, and the State manages Indian mounds, let us say, or historic monuments on land when they are on State land, and so if these are under State waters, it should be the same. I just see them as archaeological sites that should be treated as archaeological sites, and don't need new Federal legislation.

Mr SHUMWAY Professor, did you want to amplify on that or is that your answer as well?

Mr WENDORF That is my answer as well

Mr SHUMWAY Mr Firestone, why can't the interest of States in these historic shipwrecks in State waters be met adequately by the Federal courts using the principles that were established in the *Cobb Coin* case? The court's opinion in that case did show substantial respect for the historical and public educational aspects of artifacts and souvenirs that were recovered from these shipwrecks. If we could codify the principles of that *Cobb Coin* case, would that meet some of your basic concerns?

Mr FIRESTONE Congressman Shumway, we would have some concern because we don't believe that the Federal courts are an ad-

ministrative body We have nine Federal judges in the State of Florida, and for them to come to a meeting to divide up portions of treasure based on agreements would be a very difficult task Nor do they have the expertise and the background in the fields of archaeology They would have to hold endless hearings There would have to be thousands of pages of testimony developed on even the most minor kind of decision, and we don't believe that would be an efficient way to protect artifacts that belong to the people

Mr SHUMWAY It seems to me that under this bill, we are really going to invite the kind of litigation that you seem to not want to invite There are so many terms that would have to be amplified, defined, and precedents set by the courts, that we are really going to create a mecca for lawyers with this kind of legislation rather than setting up the guidelines that you and the Federal Government really want, to allow for meaningful exploration and preservation

For example, when is a ship submerged or covered by the sand, or the bottom When is it coral encrusted Those things I think are really going to invite a great deal of give and take and lawsuits

Mr FIRESTONE Congressman, that risk is involved in every body of legislation, and if artfully drawn, at least that would be minimized We also have 20 years of experience in the State of Florida in administering a program that has been working

Let me just give you a brief example of an incident First of all, Florida has never prohibited any sport diver from coming upon a wreck The only people that have made that prohibition have been salvors who had a site under admiralty arrest, so certainly the State is protecting the interests of recreational divers to a greater degree

Second, we had a situation where we were losing cannon barrels that were literally within a stone's throw of our land areas They were from a ship that went down We were finding that people were taking them, not preserving them, placing them on roadside stands in front of souvenir shops, and within a matter of years they were disintegrating We moved the barrels to one of the Federal marine sanctuaries off of Key Largo and the John Pennecamp Park We took 16 cannon barrels, placed them there so sports divers could have access to them in perpetuity That could not have occurred if it were finder's keepers under the old law They would be gone and lost to future generations

Mr SHUMWAY Thank you, Mr Firestone

Ms MIKULSKI Thank you, Mr Shumway

This concludes this hearing It does not conclude our deliberations on this bill, and other views, we might also add This has been a very, very informative hearing, and we thank all of the interested parties in laying out the issues of science and adventure and free enterprise and free intellectual pursuit, and at the same time our obligation to preserve those things related to history We do welcome additional testimony, which we talked about among ourselves as we listened to you, not as a distraction but because we are trying to arrive at a framework

We thank you again for testifying We welcome any additional comments you wish to make The hearing record will be open for

10 days, and we look forward to further dialogue on this Thank you very much

[Whereupon, at 12 35 p m , the subcommittee adjourned ]

[The following was received for the record ]

U S HOUSE OF REPRESENTATIVES,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC, October 15, 1985*

MEMORANDUM

To Members, Subcommittee on Oceanography

From Subcommittee Staff

Subject October 29, 1985, hearing on H R 3558, the Abandoned Shipwreck Act of 1985

On October 29, 1985, the Subcommittee on Oceanography will hold a hearing to receive testimony on H R 3558, The Abandoned Shipwreck Act of 1985

The hearings' first panel will include testimony from Dr Robert Ballard, regarding the Titanic shipwreck and Dr Nancy Foster, regarding the Monitor shipwreck The panel will also address general questions about the management of shipwrecks The second panel will consist of Mr Mel Fisher and other salvors The third panel of witnesses will present the views of states, archeologists, and sports divers

PURPOSE OF H R 3558

Gives states legal title and management authority over certain shipwrecks in state waters These wrecks are those which are

- 1 substantially buried in the bottom, or
- 2 in coral, or
- 3 listed, or eligible for listing, in the National Register of Historic Places

Directs the Advisory Council on Historic Preservation, in consultation with public and private interest groups, to establish advisory guidelines to develop state legislation and regulations

States that it is the intent of Congress to guarantee recreational divers rights of access to shipwrecks

BACKGROUND

The central issue underlying this legislation is whether Federal admiralty law, other Federal laws, or individual states, should govern abandoned shipwrecks on state lands

The number of total shipwrecks in state waters is believed to be greater than 50,000 Of these, approximately 5-10% might have historical significance Staff estimate that this bill would give states clear legal title to about 10-15% of the abandoned shipwrecks in State waters The legal ownership and management authority over all other abandoned shipwrecks in state waters (e g , non-historic wrecks which are not substantially buried) are not addressed by this bill

The National Register criteria for a historical listing are based on the following five concepts

A proposed listing's integrity of location, design, setting, materials, workmanship, feeling and association,

Its association with events that have made a significant contribution to broad patterns of our history,

Its association with lives of persons significant in our past,

Its distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant entity,

Its historical or prehistorical informational value

With our increasing technological advances—side-scan sonar, magnetometers (detect metal), and remote operated vehicles—an increasing number of wrecks are being found each year This has led to increasing legal conflicts about who owns shipwrecks and debate about how to best manage these sites for the use of all concerned sport divers, archeologists, salvors, and future generations

Three private sector groups have been identified as having an active interest in abandoned shipwrecks

*Sport diving community*—Comprised of approximately three million divers, about forty-one percent participate in wreck diving

*Archeological and historic preservation community*—Comprised of several thousand archeologists and historians who view some shipwrecks as ideal sites for learning about our national heritage. This group argues that land based historical sites are carefully nurtured areas, to be studied and preserved for future generations, and that marine historical sites should be treated similarly.

*Professional treasure salvors*—Comprised of an indeterminate number (2 to 40) of salvors who view wrecks as sites to find and salvage for profit.

The increasing demand on shipwrecks (particularly historic ones) by these three groups has created a multiple-use management problem similar to demands made on other finite resources. Each group has a different use for the shipwrecks. Also, in addition to the historic value, states argue that they may have other resources in the area that need to be managed in a systematic way (i.e., spawning grounds, coral reefs, mining, dredging, etc.), and that the wise use of these other resources may be adversely affected by careless salvage.

#### LEGAL ISSUES

Certain federal admiralty courts have asserted federal jurisdiction over shipwrecks. However, at the same time, many states claim title to abandoned shipwrecks on state submerged lands.

Federal Admiralty Law was designed to encourage salvors to undertake the risks of recovery operations and get the otherwise lost material back into the economy. It protects the rights of individuals to recover items from abandoned or seriously endangered ships. When property has been abandoned or become derelict, anyone can put themselves forward as the salvor. If the owner subsequently claims the property, they take it subject to the salvage claim.

Since the passage of the Submerged Lands Act in 1953, states have held title to the lands and natural resources beneath navigable waters within those states' boundaries. The Submerged Lands Act does not explicitly address shipwrecks. However, states believe that shipwrecks, in their waters, are part of the natural resources. Since 1963, twenty-five states have passed laws affecting abandoned shipwrecks in state waters. Of these states, fourteen provide compensation for recovery activities by private parties.

In addition, there are four federal court decisions which conflict with one another and thus have thrown into doubt the legal regime that governs abandoned shipwrecks within state waters. In the *Cobb Coin* decision, 525 F. Supp. 186 (1981), the U.S. District Court for the Southern District of Florida held that the Submerged Lands Act did not transfer shipwrecks to states, that the federal admiralty law of salvage applied to abandoned shipwrecks lying within Florida's state waters, and that Florida's statutes governing shipwrecks were superseded by salvage rights under admiralty law.

A conflicting opinion was handed down by the U.S. District Court for the District of Massachusetts. That Court decided that the State of Massachusetts had a claim to an abandoned shipwreck located within state waters, that an action against the property was in effect a claim against the state, and that the Eleventh Amendment of the United States Constitution barred an action against the state without its consent. The Court dismissed the action for lack of jurisdiction.

In another case, the U.S. District Court of Maryland reached a decision similar to the Massachusetts case, finding in favor of the State's claim.

The fourth case was a complex case in the Fifth Circuit in Texas. Salvors obtained title to items from a wreck in state waters after obtaining from the Texas legislature a waiver of the sovereign immunity of the state. One of the opinions of the sovereign immunity of the state. One of the opinions of the litigation, was that the salvors were not held to the standards of expertise required of marine archeologists, as the state had urged.

Most other nations have specific laws governing abandoned shipwrecks, especially historical shipwrecks. Staff have no information at present regarding how many nations have granted ownership or management authority over shipwrecks to the state/provincial governments, rather than retain those powers at the national government level.

#### RECENT LEGISLATIVE ACTION

Legislation was introduced in the 97th and 98th Congresses to protect historic shipwrecks. In the 97th Congress the bill died in Committee and in the 98th Congress the bill passed the House (H.R. 3194) but died in Committee in the Senate. Congressmen Bennett and Wright introduced H.R. 25 in the 99th Congress. After

negotiations with the sport diving community, they amended and reintroduced the bill, H R 3558, which will be the subject of the hearing on October 29

#### MAJOR ISSUES FOR THE OCTOBER 29 HEARING

1 Who should own abandoned shipwrecks? Should salvage be allowed for all shipwrecks? Should shipwrecks be managed for multi-use access? If yes, what type of management is needed to allow the most user groups access?

2 Is this legislation necessary or does existing federal admiralty law adequately resolve conflicting claims to ownership or management authority? Should Congress wait for other circuit courts or the Supreme Court to resolve the current conflicts in federal court opinions?

3 Should Federal legislation specify criteria for designating and managing historic shipwrecks? If so, should a Federal agency, or States, implement those criteria?

4 If H R 3558 is enacted, should state ownership or management of those shipwrecks be conditioned or restricted by the legislation, or should States have total discretion on how to use those shipwrecks?

#### SUPPLEMENTAL STATEMENT OF GEORGE F BASS

Mr Fisher, in his written testimony, has proposed an alternate bill that provides "archaeological guidelines." The guidelines are concerned mainly with site mapping, records, artifact tagging, artifact handling, artifact processing and stabilization, artifact conservation, diver safety, and project supervision.

The processes described are techniques. Techniques, often based on common sense, are useful and even necessary to the archaeologist, but their utilization no more leads to true archaeology than the technique of using cameras and telescopes necessarily leads to true astronomy. In order to become an archaeologist, I studied at universities for ten years. In all the courses I took during those years, I never studied mapping, tagging, handling, processing, etc. Since becoming a university professor, I have trained well-known archaeologists who work both on terrestrial and underwater sites. None of these archaeologists studied mapping, tagging, handling, or processing in my courses. These are things learned quickly in the field, usually during summer apprenticeships. I received my practical training during two years at the American School of Classical Studies at Athens, Greece (two years not included in the ten years of formal university studies mentioned above). I teach techniques to members of my excavation staffs, but that does not make them archaeologists any more than skilled local laborers on land excavations are archaeologists. Their work is archaeology only if they have the academic background to understand as fully as possible its meaning. This is why we find it essential that the head of any archaeological project must be a professional archaeologist with total control over the project.

My point may be made by analogy. Anyone with steady hands probably could be taught to remove an appendix and to suture the incision. Why, then, are surgeons trained for years in medical school before they begin their residencies in surgery? Because medicine is much more than technique.

The public (and, seemingly, treasure-hunters) often think that fieldwork is archaeology because it is the most visible part of archaeology. As stated in my original testimony, fieldwork plays a relatively modest role.

Six years ago, Peter Stanford, President of the National Maritime Historical Society, asked me to comment on shipwreck protection in "Sea History" magazine. I had failed so often in making a case for the protection of shipwrecks that I had almost given up. But I answered his request with a hastily drafted letter in the form of a "fable" or "short story." The story was mostly true, based on actual events, newspaper and magazine articles and editorials, photographs and correspondence. I simply changed shipwrecks into stars and archaeologists into astronomers in hopes of making my point. To my surprise, requests to reprint the "fable" have led to its being published in three American magazines, with a translation now made for a forthcoming Dutch magazine. It goes as follows:

#### THE MEN WHO STOLE THE STARS

When I looked into the sky that night, I thought at first that a cloud covered part of the Big Dipper. But the crisp night air had not a trace of moisture. After cleaning my glasses and looking again, I realized that Mizar simply was not there any longer. I called the observatory of the university nearest me.

"There's a star missing," I said. "Mizar isn't there any more."

"We have no comment at this time," was the reply

The next issue of "Tempus," our leading news magazine, provided an explanation Under the "Science" heading was a brief news item

"Astronomer Claude Blakely, after years of research and experimentation, has at last developed a method of capturing stars For an undisclosed price, he has sold Mizar to an anonymous dealer in Geneva The dealer, through a New York spokesman, assures the public that the star will be put on display in a private planetarium within the next two years, and that hundreds of citizens will be able to see it there"

I began a flood of outraged letters to magazines, syndicated editorial writers, and politicians The stars, I said, belonged to everybody Astronomers were supposed to map the stars, measure them, and study them in the most minute detail But, I added, astronomers were supposed to be after knowledge They were not supposed to own the stars I didn't believe that Mr Blakely should really be called an astronomer

"Your attitude strikes me as hoity-toity," replied one of the best known of the columnists "Claude Blakely knows more about astronomy than any Ph D or he couldn't have gone out and netted that star And anyway, why should professional astronomers have all the stars? There are enough to go around You're just jealous that you didn't make a buck out of it"

My response that the public as well as astronomers had a right to the stars, and that future generations had a right to see them, went unanswered

Some of the public did write to their congressmen, but since most lived in smoggy cities and never saw the stars anyway, few letters were sent A young congressman from one of the states with an exceptionally clear sky did, eventually, introduce legislation to ban star catching By then, however, Blakely had sold rights to his star-stealing device to a number of partners

"The clammy hands of big-brother government are trying to take away the hard won spoils of the last of the great inventors," thundered the columnist "Claude Blakely and his partners represent the last frontier of free enterprise"

The night that I noticed Sirius was no longer in the sky, I opened the Newsletter of Private Star Lovers that had arrived in the afternoon mail It had as a logo a bald eagle holding a star in its talons, flanked by waving American flags

"Fellow citizens Write to your congressmen about the communist-inspired plot to take away our rights to catch and sell stars There are millions of stars in the heavens, as any schoolboy knows You can't even see some of them they are so dim There cannot be any rational reason to keep them *all* up there Especially when there are billions of dollars to be made by private investors Stand up for your rights as Americans Stand up for free enterprise"

By then the night sky was beginning to look a bit faded Investors were after the really bright, sparkling stars first, so the first-magnitude stars were disappearing at an alarming rate

Astronomers made joint and private outcries about what was happening "Precious knowledge about the creation of the universe is being lost forever It doesn't do me any good to see Betelgeuse in the cavern of some Austrian duke," one wrote "It's been taken out of context"

A senator from a rather foggy state submitted a piece to a family weekly

"At last astronomy is making money, not simply spending it Millions of dollars of National Science Foundation grants will now be saved that would otherwise have been wasted on larger telescopes and more radio telescopes Have all the astronomers, spending all that money for centuries, ever made a dime for the public? They talk about knowledge Claude Blakely is the first one ever to show common sense!"

When Polaris was snatched, I was sure that the tide would turn in favor of amateur star gazers and professional astronomers But, except for a few yachtsmen, most people were watching their TV screens and couldn't be bothered about it

"Why didn't he use Loran to navigate?" my sister asked when she read the article about the sailor who lost his way because of the disappearing stars and ended on the rocks "That's what all those satellites are for, anyway, isn't it?"

"They'll be snatching satellites next," I answered I let the sharp photographs of the starry night sky drop one at a time in a pile on the floor between my feet "That's the way it used to be," I mumbled

#### STATEMENT OF HON LLOYD BENTSEN, A U S SENATOR FROM THE STATE OF TEXAS

I speak today in support of S 676, the abandoned shipwreck act of 1985 this legislation returns to the States title to historic shipwrecks lying within their jurisdic-

tional waters These wrecks preserves precious artifacts—remnants of our past, our priceless historical legacy Information from these wrecks belongs to the people of the States, and should be regulated by each individual State

In the past, there have been costly and time consuming Federal court cases regarding the issue of ownership of these wrecks These cases have yielded conflicting decisions clouding the issue of true title S 676, in contrast, would clarify this issue by granting States title to ships embedded in submerged land or coral formations, or listed on the National Register of Historic Places

The issue of States rights has surfaced time and time again in this body This legislation, in contrast to some other measures, would acknowledge States authority over these ships rather than reserve this authority for the Federal Government

The Bureau of Land Management estimates that there are now only 4,000 abandoned historic shipwrecks left along this Nation's coast These sites need some form of protection now, before their number is further depleted

I call you attention to the recent discoveries of the *Titanic* and the Spanish treasure ship, known as the *Atocha* Neither of these ships are within the States' 3-mile jurisdictional waters, and are thus not affected by this bill However, their discoveries illustrate the recent technological advancements that have increased salvors' ability to locate, recover, and raise archeological finds, consequently, there is a greater need to ensure that salvage operations promote each State's exclusive public interest

This legislation does not preclude the salvage of these ships Rather, it provides the establishment of advisory guidelines for shipwreck protection by the Advisory Council on Historic Preservation These guidelines would assist State governments in developing legislation and regulations pertinent to this act These laws would allow for the recreational exploration of shipwreck sites and private salvage of shipwrecks not injurious to the wrecks surrounding the site This measure, I believe, represents a good compromise of the several interests

He Three Primary groups interested in shipwrecks are historic preservationists, commercial salvage firms, and recreational divers Historic preservationists, made up mostly of State and Federal Government officials, private organizations, and marine archeologists, view commercial salvors as a threat to the historic value of shipwrecks Salvors, as businesses, decrease their costs in order to generate large profits in their ventures In an effort to retrieve articles of value from these wrecks, salvors have irreparably damaged other articles or damaged the wreck unnecessarily Many archeologists argue that the information lost in such salvage efforts is of higher value than the commercial worth of materials salvaged by the wrecks

There are several organizations which have publicly endorsed this legislation Among these are, the National Governors Association, the Coastal States Organization, the National Conference of State Historic Preservation Officers, the Underwater Archeological Society of Maryland, the National Trust for Historic Preservation, and the Underwater Society of America, which is the largest organization of sport divers in the country

Congressman Bennett has led the fight for historic preservation in the house I strongly support his efforts and urge my colleagues to review the testimony of these hearings if they have questions regarding this legislation which grants states the authority to preserve the valuable, historic shipwrecks in their territorial waters

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#### PREPARED STATEMENT OF ROBERT H McNULTY, PRESIDENT, PARTNERS FOR LIVABLE PLACES

Chairwoman Mikulski and members of the subcommittee Partners for Livable Places encourages Congress to explore the policy issues surrounding historic shipwrecks, and the work of your committee should be applauded for clarifying some of the concerns of historic preservationists, sport divers, salvors and state governments We are interested in historic shipwrecks as cultural resources that benefit the public through education, recreation, and tourism

Partners is an international network of more than 1100 nonprofit organizations, corporations, municipal agencies, and individuals who share a commitment to sound planning, citizen participation, and public-private sector cooperation to ensure the best use of communities' economic, cultural and natural resources An amalgam of diverse organizations such as the Conservation Foundation, American Association of Museums, Trust for Public Land, American Council for the Arts, and Wilderness Society and individuals such as parks and recreation administrators, urban designers, cultural facilities planners, environmentalists and real estate developers, Part-

ners is attuned to strengthening common ground between groups on issues of shared interest

While we are not a legislative advocacy organization, we are interested in this bill as a step on the way to the development of rational cost effective state policies which protect the resource while responding to the variety of demands on historic wrecks. So far, the polarized positions of the archeology, sport diving, and commercial salvaging communities have retarded this development. In January of 1984, Partners conducted a workshop that addressed these disagreements head-on. The workshop, called "Strategies for Maximizing the Value of Underwater Archeology" was sponsored by the William H. Donner Foundation, a copy of the report is attached. This was the first phase of our on-going involvement in the development and innovative policies affecting historic shipwrecks.

Participants at the 1984 workshop concurred that a model program would be most effective if developed at the state or regional level, rather than the national, since the characteristics of diving communities and historical resources vary considerably from state to state. For this reason, we support the Abandoned Shipwreck Act's decentralization of authority for shipwreck management. The bill appropriately respects each state's ability, following limited federal guidelines, to administer its own program tailored to factors such as the extent and significance of the state's resources, their vulnerability to natural or human damage and the extent of recreational and tourist potential.

As we stated in our letter of support to the committee in 1983, this decentralization is just the first step. We urgently need carefully crafted public policies to get the most of our historic wrecks. The creativity and financial savvy of a range of people on the national, state and local levels needs to be focused on issues including (1) incentives for the involvement of sport divers in archeological survey and excavation, (2) the need to establish archeological search priorities and reasonable access restrictions for each identified site, based on its value for research, recreation, or museum exhibition, (3) the creation of public/private financing strategies with incentives for private investment that will provide the greatest access to this heritage at the least public cost, and (4) recognition of the secondary economic value of shipwreck preservation through recreational diving, exhibits, and tourism.

Unlike nearly every other nation in the world with a resource of history shipwrecks, the US has never asserted the importance of these sites to our nation's heritage. Just as land sites and history monuments are entitled to special respect from a nation that values the lessons of history, our shipwrecks deserve recognition for what they tell us about America's discovery and early days. One of the special merits of archeological research is that it tells the history of the little man, the things the official historians often tend to omit. These wrecks are time capsules from the real men and women who came before us, we can't take their story lightly.

Partners fundamentally believes that the public interest in these relics can be served without penalizing those who have private, or commercial, interests in shipwrecks. The proposed bill lays the groundwork for this. First of all, only a limited number of wrecks are covered by the bill. Others are still completely open for salvaging, diving and other activities. Second, states will still need to contract with commercial salvors to undertake the costly and complex job of excavation. They will be able to enforce the state procedures which are on the books in the majority of states. There, sport divers are given access to wrecks, under admiralty law, salvors bringing up a wreck can ban divers from the site. This will encourage the further development of tourist interest in wrecks through state-run underwater parks such as Isle Royale National Park in Michigan and John Pennnekamp State Park in Florida. Partners believes that the interest of sport divers and "lay people" (non-archeologists and non-salvors) is an essential part of a process of public education about underwater cultural resources, and this partly motivates our support for this bill.

This leaves a great deal of work to be done. We are considering funding schemes for underwater archeology, the possibility for tax incentives, the development of standards of conduct for archeologists, sport divers and salvors, and ways to raise public awareness. States will have to conduct thorough surveys of their resources and set priorities and standards.

Some outstanding sites should be declared completely off limits until technological improvements can assure the best collection and preservation of data and artifacts. Access to others should be restricted to well-financed teams of archeologists and qualified divers. Newer or more redundant sites should be open to sport divers once they have cleared it with state archeologists. Shipwrecks not deemed historically significant or particularly valuable need not be monitored at all. The National Register of Historic Places and the National Marine Sanctuary Program each offer

a certain degree of protection and funding for sites of national cultural distinction, but the designation of historic shipwrecks has been limited

In a number of states an appointed body of advisors oversees the approval of underwater search and excavation permits, fines, and determinations of historical significance. If such advisory bodies were composed of public and private sector experts representing historic preservation, archeology, sport diving, tourism, museums, parks and recreation, coastal management or another marine or natural resource agency, and a university or other research and training institution, they could become more effective forums for idea sharing, balanced discussion, financial brainstorming and the cooperative execution of each state's activities

There is no doubt that shipwrecks draw tourists, a fact that other nations have capitalized on better than has the U.S. The Western Australian Maritime Museum, which is responsible for all shipwrecks in that Australian state, had 100,000 visitors its first year. The museum of the *Wasa*, the Swedish warship that was raised after more than three centuries on the bottom of Stockholm's harbor, is Sweden's major tourist attraction, drawing over 500,000 paying visitors a year. Thus, in or out of water, historic shipwrecks and the stories they tell can have a real economic value beyond the market value of the individual artifacts

This fascinating illustrative history needs to be fed back into the public system through secondary school curricula, traveling exhibits, and popular publications. Policies must be developed to encourage the collaboration of archeologists, historians, oceanographers, divers, park managers, conservators, interpretation specialists, educators, and tourism consultants and stimulate public and private financing to bring this hidden heritage into the public realm

Historic shipwrecks are among the least uncharted areas for enlightened cultural policy. Regardless of their booty, we can't afford to squander these inherited gems for the pleasure of a few enterprising individuals. We support the Abandoned Shipwreck Act and the efforts of the committee to preserve a few remnants of our past for the enlightenment of our future

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## STRATEGIES FOR MAXIMIZING THE VALUE OF UNDERWATER ARCHEOLOGY CONFERENCE REPORT

### INTRODUCTION

Consider three events of the past ten years—events that, at first glance, may seem of primary interest only to historians and archeologists

The *Mary Rose*, a heavy-laden English warship sunk in 1545, is discovered and salvaged in Portsmouth harbor. The wreck yields an invaluable trove of sixteenth-century artifacts during excavations performed largely by sport divers and amateur archeologists, including Britain's Prince Charles

The legendary Civil War ironclad *USS Monitor* is located off Cape Hatteras and its distinctive anchor is raised. Sunk in 1863, the fragile, historic wreck is found—after more than a century of searching—only through a long and costly effort mounted jointly by government and the private sector

The *Atocha*, a Spanish galleon sunk in 1622, is found by private "treasure hunters" who report raising, from both the *Atocha* and another Spanish wreck, some \$60 million in gold and other artifacts to the surface. A subsequent decision weighs government claims, but awards all of the recovered booty to the salvors

These three recent events illustrate several aspects of a field growing rapidly more popular and important, not only to historians and archeologists but to society as a whole

First, they illustrate the tremendous excitement, diversity and potential reward—both financial and scholarly—of underwater archeology. The promise of "sunken treasure" has lured shipwreck hunters for centuries. The archeological promise hidden beneath the waters that cover over 70 percent of the earth's surface may be beyond reckoning

Second, these events illustrate the striking variety of people involved in the field of underwater archeology. Sport divers and amateur archeologists, treasure hunters of varying repute, and highly trained academics all vie for what seem—in the public perception—to be the same gain

Third, these three events also illustrate a number of serious questions now being posed in the relatively new field of underwater archeology

To whom should control of the *Atocha's* bounty—of priceless historic as well as financial value—ultimately belong?

How should the remains of the *Monitor*—so delicate that if raised and exposed to the air the ship might literally dissolve—be treated now that they are found?

From where should come the money needed to find, explore and protect such invaluable relics as the *Mary Rose*—a British ship whose salvaging was financed in large part through American Fundraising?

And to whom—amateur or professional, scholar or treasure hunter—should the job of finding, recovering and preserving such historic objects be entrusted?

Modern marine archeology dates, in practical terms, only back to the development of scuba diving in the 1940's. But because centuries of archeological problem-solving over issues of funding, access, scholarship and ownership have focused on land sites, the field is problematic beyond its years. Advanced techniques for searching, recovery and preservation—as well as diving—have thrust underwater archeology into a difficult adolescence, and those involved in the field are only now beginning to sort out its priorities.

In January, 1984, an unprecedented roundtable workshop brought together representatives of the disparate disciplines involved in underwater archeology today. Sponsored by the William H. Donner Foundation, the workshop was organized by Partners for Liveable Places, a nonprofit, Washington D.C.-based consortium of cities, towns, organizations and individuals concerned about the preservation of cultural resources.

More than broad-ranging, the workshop involved most of the disciplines and major organizations in the Western Hemisphere—and some beyond it. Participants represented Parks Canada, the National Geographic Society and Britain's Nautical Archeology Society, as well as such nonprofit groups as the National Trust for Historic Preservation and the Atlantic Alliance for Maritime Heritage Conservation. Two state governments—those of Florida and South Carolina—were represented, as were three federal government offices and one committee of the U.S. Congress. Members of the academic community, museum directors and some of the hemisphere's most successful shipwreck salvors were also in attendance.

More important than the breadth of this gathering was the fact that it actually achieved a consensus, and an important one. For the first time in the history of modern underwater archeology, the central issues of the field—some 45 in number—were listed, assessed, discussed, ranked in terms of their priority and ultimately merged into six general areas.

The product of this process follows in brief summary here. In the view of those participating in the workshop, it constitutes a critical agenda for their field, an agenda on which hinges the future of underwater archeology and the realization of its potential—equalling and perhaps even surpassing that of traditional, land-based archeology—as a window on human history.

## I DEFINING TERMS

The workshop's first point of agreement was that it is difficult—for public and professional alike—to reckon with any field that embraces so many broadly different and seemingly divergent practitioners. Thus, the terms and parameters of underwater archeology must be defined as clearly and responsibly as those of any other science or discipline.

Toward that end, the workshop sifted through the field's frequently used names—a list that ranges from "shipwreck archeology" to "treasure-hunting"—and agreed that "underwater archeology" accurately characterizes the endeavors of the field, and should define responsible attention to all historic underwater objects, including submerged sites that may once have been above water as well as shipwrecks and other sunken vessels.

The workshop participants also agreed that it is substantially less clear whether all underwater objects are historic, and thus deserving of archeological study and attention. Do only ships and sites over a century old qualify as "historic," with more recently submerged objects—however important—falling under that traditional rule of the sea which bestows sole possession of any abandoned vessel upon the salvor? Until such questions are addressed, clear distinctions in underwater archeology—between "abandoned ship" and "archeological site," between "archeologist" and "salvor," between "amateur" and "professional"—may be impossible to attain.

## II EDUCATION, ENGENDERING COOPERATION, AWARENESS AND GOODWILL

It was the consensus of the workshop that underwater archeology needs more serious attention among the academic, diving and lay communities, and that its need for education cuts across all of the problems of the field and across all of its constituencies.

With the rapidly growing popularity of sport diving, the lines dividing underwater archeology and underwater recreation have blurred. The general public—from which the community of recreational divers is being drawn in ever increasing numbers—broadly perceives shipwrecks to be either abandoned vessels of little worth or caches of “sunken treasure” available for the finder’s keeping. As in land-based archeology—which has been plagued by similar perceptions—often neither is the case. Education must encourage a public perception of submerged sites and shipwrecks as being—just as fossils, pottery shards and ancient bones are—storytellers of history.

That educational process has begun with efforts at creative interpretation at a number of underwater sites. But the consensus of the workshop was the further educational measures are needed. For the public, such measures might range from articles in general circulation periodicals to books and motion pictures. In the academic community, they might include endowed university chairs and symposia. Among divers—both recreational and professional—education is needed to impart the importance, techniques and basic conservation ethic of archeology. And among archeologists, education should offer an equivalent understanding of diving.

There are many difficulties in the field of underwater archeology. Landbased archeologists are alleged to disparage the nontraditional inclinations of their undersea colleagues. Salvor allegedly lack an appreciation of the archeologist’s historiographic concerns, and archeologists fail to understand the salvor’s financial interests.

Doubt as to ethical standards may exist on all parts. These are the problems of an emerging science, and education in all the communities of underwater archeology will go a long way toward correcting the misinformation on which problems are generally based.

### III ESTABLISHING A DATA BASE AND A CLEARINGHOUSE

Workshop participants concurred that the most serious hindrance to education in underwater archeology is the lack of a foundation on which to build. Education revolves around knowledge, and knowledge is cumulative—yet no cumulative evaluation of underwater archeology’s resources exists today. That, for an emerging science, is a potentially crippling problem, and one whose solution, the workshop agreed, should be organizational.

Without addressing questions of male (national, hemispheric or global), the workshop agreed that compilation of underwater archeology’s resources—sites and shipwrecks, documentation and publications—as well as its experiences—projects successful and unsuccessful—must be brought together to form an essential and presently nonexistent data base.

Once formed, this data base must be maintained, expanded and made available for dissemination in the kind of consistent fashion that will encourage a cooperative, interactive spirit in a very complex field.

The workshop also concluded that the need for a data base and the jobs of maintaining, expanding and disseminating its information all implied the need for a centralized clearinghouse in which the disparate resources, experiences and people of underwater archeology can intersect for the common benefit of the field.

### IV BUILDING A DISCIPLINE

The workshop’s consensus was clear that centralization holds promise for underwater archeology precisely because so many of its problems spring from the sheer diversity of its goals, interests and participants.

A central data base could, for example, substantially improve the processes of identifying, recording and preserving the world’s undersea archeological resources simply by bringing those processes—or their results—together. And it could make possible the development of a priority-based system that would enhance the protection and utilization of those resources, refining calibrations for the range that now offers only two ways to categorize objects—as “abandoned vessel” or “archeological site.”

Assuming an institutional character for this data base, a central body could establish standards of accountability in underwater archeological research. It could establish standards of diving expertise for archeologists and ethical standards for those to whom archeologists refer as “lay-divers”—divers with little or no formal training in archeological technique.

Such a central body could do much to unify the disparate elements of underwater archeology into a single discipline. It could provide a structure for arbitration when differences arise, and it could serve as a forum for both intradisciplinary sharing and interdisciplinary discussion. It could also give underwater archeology a unified

voice with which to communicate with the public—and with the public's own powerful voices, state and national government

#### V DETERMINING GOVERNMENT'S RESPONSIBILITY

Governmental involvement in underwater archeology is a given, and it will grow as the value of undersea archeological resources becomes more clear. But the precise role that any government—state or national—should play has yet to be fully debated, and a lack of federal interest and commitment has created a vacuum in which standing decisions have little lasting effect. Laws on the books in 26 states have been rendered unenforceable in the inconsistent wake of federal court decisions, and, in the absence of federal statutes, treasure-hunting in public waters is sanctioned under the “finders-keepers” doctrine of maritime law.

Workshop participants agreed that the debate over governmental responsibility in the field should focus first on government as an instrument for the public benefit. Although “public benefit” has yet to be defined in terms of underwater archeology—or defended with force of law—certain issues seem likely to call for attention first. The ownership of recovered artifacts is one. Artifacts recovered through privately sponsored efforts run the risk of being “lost” into private ownership, government, acting on behalf of the public trust, could mitigate this risk in a number of ways, ranging from rights of first refusal in purchasing to the imposition of eminent domain. Other, equally sensitive issues related to the protection of archeological resources including resource conservation, curation and management—may require government involvement, singularly or in partnership with the private sector.

Administrative issues also suggest a role for government. Given the global nature of underwater archeology, questions of jurisdiction are frequently important. Yet federal and state governments in the United States have no joint approach to jurisdictional disputes. Internationally, there is no mechanism for consistent cooperation between nations and no forum in which to address the possible divergence of archeological needs and political or economic concerns.

#### VI FINANCING

Although underwater archeology has no shortage of problems, its greatest has always been its cost. Simply locating underwater sites is time-consuming and expensive, overcoming the natural obstacles to research and recovery and conserving the results thereof are even more costly.

Government's vast resources suggest that its most important role in undersea archeology might be as a source of funds. The public benefit inherent in well-funded, responsibly conducted undersea research bolsters this thesis. But the workshop agreed that the private sector—the traditional source of funds for underwater archeology—should continue in that capacity. New methods of encouraging private sector support are needed, however, and government can play a vital role in the stimulation of private support.

Among the proposals offered during the workshop was the development of matching grants that would bring the public and private sectors into partnership in the support of underwater archeology. Government funding would provide an incentive to private support and a credibility that privately mounted ventures often find difficult to attain. Other forms of indirect government support—tax incentives and a voluntary contribution check-off on tax forms—also merit serious consideration.

To enhance private sector support, the workshop agreed that several preliminary steps are required before private funding can be expected to increase substantially. Higher credibility, established standards and the identification and concentration of effort on endangered sites would significantly improve underwater archeology's public relations. Efforts to increase corporate support could include matching grant proposals and the possibility of assistance through the provision of in-kind products and services rather than direct financing. And the solicitation of support from foundations and other nonprofit sources should be increased.

Financing is, in underwater archeology as perhaps in all things, the bottom line, for the sophistication, expertise and results of underwater archeology to increase, the resources that support those efforts must increase. But the workshop agreed that this equation is not as simple as it might appear. To expect funding to increase before the discipline's other problems can be solved is unrealistic, and to address issues of finance before—or at the expense of—addressing the other issues raised during the workshop would be counterproductive. The consensus of this workshop was evenhanded, a clear definition of the purposes, standards and practices of underwater archeology, a higher level of education for professionals and public alike, the development of a comprehensive data base and system of information dissemina-

tion, the centralization of scattered resources and goals into a single unified discipline and a determination of government's roles and responsibilities are all aims to be pursued in tandem with the search for greater financial support. Those aims, in fact, might warrant primary attention, because they will establish underwater archeology as a responsible discipline whose efforts and results can be of incalculable historical benefit to society. That perception would ease the task of finding support for underwater archeology substantially.

#### PREPARED STATEMENT OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

The Advisory Council on Historic Preservation offers the following testimony concerning H R 3558, the Abandoned Shipwreck Act of 1985. The Council is an independent agency of the Federal Government, empowered by Section 202(a)(1) of the National Historic Preservation Act (16 U S C 470j) to advise the President and the Congress on matters relating to historic preservation.

On August 30, 1983, the Council adopted the following resolution: "Recognizing that historic shipwrecks are a part of the Nation's patrimony, the Advisory Council on Historic Preservation supports legislative clarification of laws affecting shipwrecks listed in or determined eligible for the National Register of Historic Places. The Council urges, however, that any such legislative actions include historic shipwrecks in a manner consistent with the National Historic Preservation Program and its precedures and intergovernmental relationships."

Enactment of H R 3558 would fulfill the intent of the Council's resolution. It would help protect the historic and archeological value of abandoned shipwrecks in State waters, and help rationalize the now-confused legal status of such wrecks. It would place the States at the center of a system for the management of historic wrecks. This is consistent with the broad purposes and approach of the National Historic Preservation Act, under whose terms every State has established a State Historic Preservation Officer and an administrative structure to support the identification, protection, and enhancement of historic properties.

H R 3558 provides for the Advisory Council to prepare advisory guidelines for use by the States in carrying out their authorities over shipwrecks. We are prepared to undertake this task. In preparing such guidelines we would anticipate drawing on our experience in dealing with the recovery of shipwrecks under Section 106 of the National Historic Preservation Act (16 U S C 470f). Section 106 requires that Federal agencies take into account the effects of their actions on historic properties, and afford the Council a reasonable opportunity to comment on such actions. Our regulations (36 CFR Part 800) prescribe a process by which concerned parties consult and seek to reach agreement as to how the actions in question will be carried out in a manner that respects the historic values of the property subject to effect.

Recovery of historic shipwrecks often involves disturbance of the ocean bottom in a way that requires the salvor to obtain a permit from the U S Army Corps of Engineers. Issuance of such a permit constitutes a Federal undertaking subject to review under Section 106, which provides us with opportunity to comment on such an undertaking. This usually involves review of the plan for wreck recovery, and the establishment of conditions to ensure that the work is done in accordance with sound archeological principles. Attached for your reference is a recent agreement dealing with recovery of a shipwreck, in this case the possible wreck of the pirate ship *Whiddah*, of Cape Cod. As you can see, the agreement emphasizes

- 1 conducting the work in accordance with an agreed-upon plan,
- 2 ensuring that the work is supervised by qualified personnel,
- 3 ensuring that the work is carried out in accordance with sound archeological principles,
- 4 ensuring that appropriate conservation measures are applied to the materials recovered, and
- 5 ensuring that records and reports of the work are made and disseminated.

The agreement does not seek to establish ownership or eventual disposition of the materials recovered. The Council neither opposes nor supports the private recovery and retention of artifacts from shipwrecks; we are concerned instead with retaining and realizing the public interest in the archeological and historical information embodied in wrecks and the materials they contain. This leads us to be concerned about the way in which wrecks are excavated, and the manner in which the information recovered is recorded and made available to the public, but not with the disposition of finds as such. We anticipate that the same approach would guide our work on guidelines under H R 3558. We would address ourselves to the ways in which shipwrecks can be protected and administered in place if a State decides to do

so, to effective mechanisms for ensuring non-destructive access to wrecks by recreational divers, and to appropriate measures for the recovery of archeological data from wrecks, but we would regard disposition of materials recovered from wrecks to be a matter for negotiation between States and potential salvors. Both in the development of the guidelines and in the guidelines themselves, we anticipate emphasizing consultation among agencies, salvors, recreational divers, and archeologists to resolve differences of approach to and divergent interests in the maintenance and recovery of shipwrecks. The Council is well-acquainted with this principle of balancing the competing interests of the various groups in historic properties through its administration of the Section 106 process. We would welcome the opportunity to bring this experience to the shipwreck question in the way envisioned in H.R. 3558.

~~U.R. 3558, Abandoned Shipwreck Act~~  
~~10-29-85~~

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TEXAS ★ ANTIQUITIES ★ COMMITTEE

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October 16, 1985

Ms Barbara A Mikulski  
 Chair  
 Oceanography Subcommittee  
 U S House of Representatives  
 H2-541 House Office Bldg , Annex 2  
 Washington, D C 20515

RE Support for HR <sup>3558</sup> /S676 The Abandoned Shipwreck Act of 1985

Dear Congressperson Mikulski:

I wish strongly to support passage of HR <sup>3558</sup> , The Abandoned Shipwreck Act of 1985, and urge you to vote in favor of the Act

Historic shipwrecks should be the property of all citizens of the coastal states and the rest of the United States. By careful excavation under permits, archaeologists can learn much by the context of objects in addition to the objects themselves. Commercial treasure salvors do not excavate in a responsible manner, but remove the specimens which will bring high prices and leave behind the very important, but noncommercial, objects such as ballast stones and pieces of the ship's hull in a disassociated dump pile. After commercial sale the objects from a single collection are usually widely dispersed, with either minimum or no information included and with no benefit to other citizens.

It has been well demonstrated that a ship which has been buried for decades, or for hundreds of years, is usually in little danger from natural forces. The remains are much safer waiting under water and sand for responsible excavation rather than being subject to the destruction of a "salvor".

It is also urgent to obtain passage of HR <sup>3558</sup> to assist states such as Texas, where the damage done to the 1554 Treasure vessels partially excavated by private exploiters was very extensive and provides a prime example of loss of information, in addition to poor retrieval and specimen treatment by treasure salvors working only for their own profit.

Federal and state statutes protect historical resources and archaeological sites on land. It is urgent that protection be extended to include underwater resources as well.

We shall depend on your support in this matter.

Sincerely,

*William G Reeder*

William G Reeder  
 Chairman

WGR/vec/dce

P O BOX 12276

★

AUSTIN TEXAS 78711

★

(512) 475-4242

~~H R. 3558, Abandoned Shipwreck Act~~  
~~10-29-85~~

TEXAS ★ ANTIQUITIES ★ COMMITTEE

October 16, 1985

Ms Barbara A Mikulski  
 Chair  
 Oceanography Subcommittee  
 U.S. House of Representatives  
 H2-541 House Office Bldg  
 Annex 2  
 Washington, D C 20515

Re Support for HR <sup>3558</sup>/S676 The Abandoned Shipwreck Act of 1985

Dear Congressperson Mikulski

The purpose of this letter is to express my strong support for HR <sup>3558</sup>/S676, the Abandoned Shipwreck Act of 1985. As the Texas State Marine Archeologist, I can assure you of the urgent need for this legislation. The Antiquities Code of Texas is specifically designed to protect historic shipwrecks in state waters.

The Texas Antiquities Committee, as the agency responsible, has developed a program of active management and research for these irreplaceable, non-renewable, historic resources. Under the present conditions, with the historic wrecks subject to salvage under the admiralty jurisdiction of the federal courts, these carefully designed state plans can be superseded and the wrecks destroyed.

Please make every effort to see that HR <sup>3558</sup>/S676 is enacted. If I can be of further assistance, please let me know.

Sincerely

*J. Barto Arnold III*

J. Barto Arnold III  
 Marine Archeologist

JBA yec

**ESPEY, HUSTON & ASSOCIATES, INC.**

*Engineering & Environmental Consultants*

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17 October 1985

Barbara A Mikulski  
Chair Oceanography Subcommittee  
U S House of Representatives  
H2-541  
House Office Building Annex 2  
Washington, D C 20515

Representative Mikulski

This letter is in support of House of Representative Bill HR 3558,  
"Abandoned Shipwreck Act of 1985"

Sincerely,



Clell L Bond  
Associate

CLB js

**ESPEY, HUSTON & ASSOCIATES, INC.**

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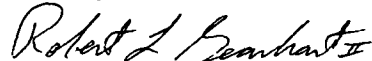
17 October 1985

Barbara A Mikulski  
Chair Oceanography Subcommittee  
U S House of Representatives  
H2-541  
House Office Building Annex 2  
Washington, D C 20515

Representative Mikulski

This letter is in support of House of Representative Bill HR 3558,  
"Abandoned Shipwreck Act of 1985"

Sincerely,



Robert L Gearhart II  
Nautical Archaeologist

RLG js

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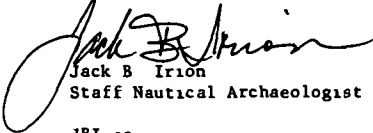
17 October 1985

Barbara A Mikulski  
Chair Oceanography Subcommittee  
U S House of Representatives  
H2-541  
House Office Building Annex 2  
Washington, D C 20515

Representative Mikulski

This letter is in support of House of Representative Bill HR 3558,  
"Abandoned Shipwreck Act of 1985"

Sincerely,



Jack B Irion  
Staff Nautical Archaeologist

JBI js

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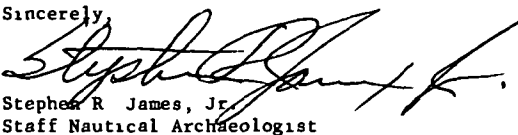
17 October 1985

Barbara A Mikulski  
Chair Oceanography Subcommittee  
U S House of Representatives  
H2-541  
House Office Building Annex 2  
Washington, D C 20515

Representative Mikulski

This letter is in support of House of Representative Bill HR 3558,  
"Abandoned Shipwreck Act of 1985"

Sincerely,



Stephen R James, Jr.  
Staff Nautical Archaeologist

SRJ js

~~H R 3558, Abandoned Shipwreck Act~~  
~~10-19-85~~



OFFICE OF THE GOVERNOR  
 STATE CAPITOL  
 AUSTIN, TEXAS 78711

MARK WHITE  
 GOVERNOR

October 18, 1985

Dear Chairwoman Mikulski:

I would like to thank you and the members of the Oceanography Subcommittee for the opportunity to present a statement for the record regarding the Abandoned Shipwreck Act, H R 3558. I fully support this proposed legislation since it would serve to protect our historic resources and also give the states authority to manage abandoned shipwrecks on submerged state lands. While the bill would prevent unnecessary destruction of shipwrecks, it would not restrict sport divers and responsible excavators. The same state and federal laws which protect archaeological resources on dry land would apply to historic shipwrecks on submerged lands.

Both the National Governors' Association and the Coastal States' Organization have adopted policy resolutions which call for such legislation. I have attached these resolutions to be entered into the record.

I appreciate your efforts on this important legislation, and urge your favorable consideration of H R 3558.

Yours truly,

  
 Mark White  
 Governor of Texas

The Honorable Barbara A. Mikulski  
 Chairwoman, Oceanography Subcommittee  
 House Merchant Marine and Fisheries Committee  
 2404 Rayburn House Office Building  
 Washington, D. C. 20515

Attachments (2)

## COASTAL ZONE MANAGEMENT

### I. The Federal/State Partnership

The Coastal Zone Management Act (CZMA) of 1972 authorized the framework for the wise stewardship of our nation's coastal resources. To accomplish this, the CZMA established a unique partnership between federal, state, and local governments to ensure the balanced consideration among the myriad competing coastal resource uses. The CZMA encourages coastal states to develop coastal management plans, subject to review and approval by the federal government. In addition to its oversight function, the federal role in the partnership consists of a combination of financial assistance to states and the assurance of consistency of federal activities with approved state management plans.

To date, the partnership established by the CZMA has been remarkably productive. More than 90 percent of our national coastal areas now fall under a federally-approved state coastal management plan. Twenty-eight of thirty-five eligible coastal states and the territories have instituted these plans, and several other states are now in the process of doing so as well.

### II. Need to Continue the Federal/State Partnership

Because of their experience in managing these programs, coastal states and territories have developed a unique expertise for dealing with coastal zone management issues. This expertise will become increasingly important as pressures upon the nation's finite coastal resources continue to increase. The nation's coastal areas now contain more than half of our population and that percentage is expected to grow to 80 percent by the year 2000. The coastal areas of the country are increasingly called upon to support a tremendous and often conflicting array of critically important activities: fisheries development and enhancement, commerce and industrial port development; energy exploration and production, public access and recreation, waterfront restoration and housing; wetland preservation and coastal preservation, etc. In order to provide a national framework which fairly and efficiently considers and balances among all of the uses and users of coastal resources, the state-federal partnership established by the CZMA must continue. The National Governors' Association believes that it is important for the states to continue to take primary responsibility for implementation and improvement of coastal zone management plans. However, to continue the workable partnership established by the CZMA, it is equally important for the federal government to continue to provide states with regulatory incentives and financial assistance.

### III. Means to Promote the Federal/State Partnership

- A. Reauthorization of the CZMA. To aid the states in their efforts to develop workable coastal zone management plans, it is incumbent on the federal government to continue to provide a national framework under which judicious consideration can be given to the interests of all legitimate users of coastal resources. The CZMA has provided a workable national framework to date. The National Governors' Association believes that Congress should reauthorize the CZMA in 1985.
- B. Provide for Adequate Federal Funding. Without adequate financial resources, it would be impossible for the states to continue to play a leading role in the administration of coastal zone management plans. The NGA believes that it is incumbent on Congress to continue to provide stable and predictable funding to help the states meet their obligations under the CZMA. This federal financial commitment can be met either by general revenues or through allocation of a portion of federal offshore development revenues.

- C. Consistency Review Central to the federal/state partnership under the CZMA is the consistency review process that allows states to monitor federal activities to ensure compliance with state plans. The effectiveness of this review process has been called to question by a Supreme Court ruling that the sale of federal oil and gas leases on the Outer Continental Shelf is not subject to state consistency reviews. The NGA believes that the court's decision undermines the effectiveness of the federal/state partnership under the CZMA. The NGA urges Congress to enact legislation to ensure that all federal activities affecting a coastal zone and subject to an approved state plan are subject to the consistency review process.
- D. Coastal States Organization. By representing the collective interests of coastal states, the Coastal State Organization (CSO) performs a vital function in ensuring the continuation of the federal/state partnership under the CZMA. The NGA supports the CSO in its efforts to address major coastal and marine issues such as: national ocean policy; coastal energy resources and facilities, wetlands protection; waterfront restoration, and coastal pollution.

#### IV. Conservation of Historic Shipwreck Resources

The Governors are dedicated to promoting the conservation of cultural shipwreck resources of historical significance which are buried in state lands. We believe legislation should be enacted to clear up ambiguities resulting from conflicting federal court decisions on the ownership of abandoned historic shipwrecks in state lands and waters. Resolution of these differences can best be achieved by granting states title to and management authority over certain abandoned shipwrecks on submerged state lands.

The Governors believe multiple-use management of these finite resources should be based on state ownership and management authority. Congress should be encouraged to enact legislation affirming state title and jurisdiction over a properly constructed program in which states retain control over excavations on state land to encourage the proper management of these abandoned shipwrecks, while allowing access to the resources by sport divers and other interested groups.

Revised August 1980 and February 1985.

Conservation of Historic Shipwrecks

The Coastal States Organization (CSO) supports the conservation of abandoned shipwreck resources of historical and cultural significance which are buried in submerged state lands. Historic shipwrecks are a finite resource subject to multiple-use demands, primarily from three major groups -- recreational divers, archaeologists and treasure salvors.

In recent years, disputes have arisen over rights to ownership of and management authority over these shipwrecks. The states have held title to the submerged lands and natural resources within state territorial waters since the passage of the Submerged Lands Act in 1953. Whether or not shipwrecks found on state lands are included within the jurisdiction of the Act has been subject to question in the courts. Some court decisions have supported the validity of state claims to shipwrecks, while others have upheld the traditional federal admiralty law of salvage.

The CSO believes that resolution of these differences can best be achieved through the enactment of legislation which grants states jurisdiction over abandoned shipwrecks on submerged state lands. The states have already demonstrated their commitment to managing historic shipwrecks. All the states have legislation and programs in place to protect historic archaeological resources, while 25 states have passed specific laws governing the use and preservation of abandoned historic shipwrecks within their boundaries. It is fitting that states now assume the role of responsible managers in determining the multiple use of various historic shipwreck sites within their territorial waters.

The CSO, therefore, encourages Congress to enact legislation affirming state title to and jurisdiction over a properly constructed program in which states retain control over excavations on state lands to encourage the proper management and conservation of these abandoned shipwrecks, while allowing access to the resources by sport divers and other interested groups

Adopted: May 3, 1985

3643 Fenley Road  
Cleveland Hts., OH  
44121  
Oct. 20, 1985

Congressman Walter B. Jones, Chairman  
Committee on Merchant Marine and Fisheries  
U. S. House of Representatives  
Washington, D. C. 20515

Dear Congressman Jones:

Historic shipwrecks, like time capsules, hold precious knowledge of another era. We should insure that this extraordinary -- but fragile -- legacy to us is recovered. Since it is quickly dissipated by carelessness or ignorance, I urge your support of Historic Shipwreck Preservation Bill H. R. 25 that this knowledge now at hand's reach may accrue to our present and future benefit.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth H. Cowin". The signature is written in dark ink and is positioned below the word "Sincerely,".

216/382-4478

~~H R 3558, Abandoned Shipwreck Act~~  
~~10-29-85~~

Barbara A Mikulski  
 Chair Oceanography Subcommittee  
 J S House of Representatives  
 42-541  
 House Office Building Annex 2  
 Washington, D C 20515

RE HR <sup>3558</sup>/S676---The Abandoned Shipwreck Act of 1985

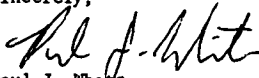
Dear Representative Mikulski,

I am a registered voter and a professional archaeologist I write this letter to urge you and your colleagues to support HR <sup>3558</sup>/S676 While the issue is a complex and emotional one, that is, the omnipresent conflict between the public's right to resource preservation and resource exploitation, this long-debated bill is neither complex nor emotional

The Abandoned Shipwreck Act of 1985 provides a proven mechanism for both public input and professional direction as regards shipwrecks discovered on submerged lands within the public domain By relying on the existing and highly effective Advisory Council on Historic Preservation, this bill reaffirms the Federal Government's long-standing commitment to historic resources up <sup>3558</sup>/S676 recognizes that the fact that these resources are under water makes them no less valuable than their already-protected land locked counterparts

I ask that you please support HR <sup>3558</sup>/S676

Sincerely,



Paul J White  
 member, Council of Texas Archeologists

PJM/pw



~~H.R. 3558, Abandoned Shipwreck Act~~  
~~10-25-85~~

**COUNCIL  
OF  
TEXAS ARCHEOLOGISTS**

---

*PRESERVATION AND CONSERVATION OF THE CULTURAL RESOURCES OF TEXAS*

Oct 21, 1985

Barbara A Mikulski  
Chairperson  
Oceanography Subcommittee  
U S House of Representatives  
H2-541 House Office Bldg Annex 2  
Washington, D C 20515

Re Support for HR 3558 and S 676 - The Abandoned Shipwreck Act of 1985

Dear Ms Mikulski

This letter is to serve as a reaffirmation of the Council of Texas Archeologist's support of the Abandoned Shipwreck Act which is now pending in both the House and Senate. The Council voted again in support for this bill at our last meeting and we hope the bill passes for the good of historic preservation and the good of the citizens of our nation.

Sincerely

Mark H Denton  
Secretary-Treasurer

H. R. ~~2558~~, Abandoned Shipwreck  
~~18-29~~



**THE ATTORNEY GENERAL  
 OF TEXAS**

**JIM MATTOX  
 ATTORNEY GENERAL**

October 21, 1985

Congressman Walter B. Jones  
 Chairman, Merchant Marine Committee  
 House Merchant Marine and Fisheries Committee  
 U.S. House of Representatives  
 1234 Longworth House Office Building  
 Washington, D.C. 20515

Dear Congressman Jones:

I would like to express my strong support for H. R. 3558, the effort to protect historic shipwrecks. As you may know, Texas has approximately 650 shipwrecks off its coast that have been designated as historical landmarks. This legislation should assist state officials in the preservation and management of these irreplaceable resources. I sincerely appreciate your efforts to pass this worthwhile legislation.

Yours truly,

JIM MATTOX  
 Attorney General of Texas

P.O. Box 12548  
 Austin, Tx. 78711  
 (512) 475-2501



# TEXAS HISTORICAL COMMISSION

P O BOX 12276

AUSTIN TEXAS 78711

(512) 475-3092

October 21, 1985

Ms Barbara A Mikulski  
Chair  
Oceanography Subcommittee  
U S House of Representatives  
H2-541 House Office Bldg  
Annex 2  
Washington, D C 20515

Re Support for HR <sup>3558</sup>/5676 The Abandoned Shipwreck Act of 1985


Dear Congressperson Mikulski

As Executive Director of the Texas Historical Commission, I also serve as the State Historic Preservation Officer. In both capacities I am writing to express my support for the Abandoned Shipwreck Act of 1985 (HR <sup>3558</sup>/5676). The bill will allow the State of Texas to manage and protect historic shipwrecks in its waters. Historic shipwrecks in submerged lands owned outright by the Federal government, such as those along Padre Island National Seashore, will also be protected. A resolution by the Texas Historical Commission in support of this legislation is enclosed.

The present form of the bill represents a long series of consultations and compromises. All concerned groups such as the Archeological and historic preservation community, sports divers, and treasure salvors have provided input and have actively participated in the structuring of this legislation. Speaking for archeologists and historic preservationists in the State of Texas, I urge passage of HR 3558.

Your assistance in this matter is greatly appreciated.

Sincerely,

  
Curtis Tunnell  
Executive Director

CT JBA yec  
Enclosure

*The State Agency for Historic Preservation*

## TEXAS HISTORICAL COMMISSION RESOLUTION

WHEREAS, there are over 563 documented historic shipwrecks known to lie in Texas waters, and

WHEREAS, historic shipwrecks represent closed time capsules of irreplaceable historical and archeological data, and

WHEREAS, historic shipwrecks are comparable to oil and gas reserves in being a nonrenewable resource, and

WHEREAS, over 1000 documented twentieth-century shipwrecks known to lie in Texas waters will continue to be available to the sport diving public, and

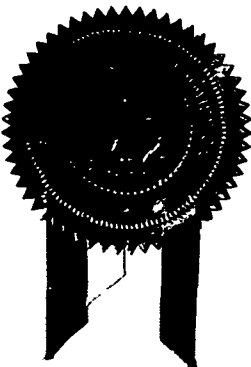
WHEREAS, historic shipwrecks on the national scene are being destroyed at a rapid rate by a small number of commercial treasure salvage companies, and

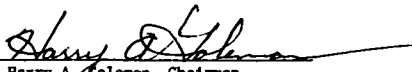
WHEREAS, only a very small percentage of historic shipwrecks contain actual treasure in silver and gold which could conceivably make a treasure hunt profitable, and

WHEREAS, the proposed legislation will promote preservation of those historic shipwrecks which meet the age requirement for eligibility for the National Register of Historic Places by removing them from the jurisdiction of the federal Admiralty Courts and placing responsibility for their protection with the individual states, and

WHEREAS, historic shipwrecks should be preserved for careful scientific archeological study to benefit all the citizens of Texas,

THEREFORE, be it resolved that the Texas Historical Commission endorses and supports HR3558 and S 676, the federal legislation to protect historic shipwrecks, known as The Abandon Shipwreck Act of 1985, and that this legislation is in the best interest of the State of Texas and its citizens



  
Harry A. Solomon, Chairman  
Texas Historical Commission

October 22, 1985

The Hon Barbara Mikulski, Chair  
 Oceanography Subcommittee  
 Merchant Marine and Fisheries Committee  
 U S House of Representatives  
 Washington, D C 20515

Dear Madam Chairwoman

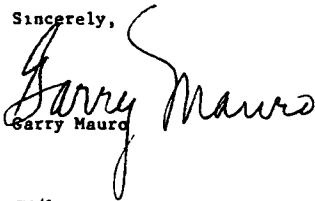
Please accept my personal gratitude for scheduling a hearing in your subcommittee next Tuesday, October 29, on the "Abandoned Shipwreck Act of 1985" (H.R. 3558)

This important legislation will clarify, in a balanced and appropriate fashion, the states' authority and responsibility to manage these historic resources on our own state submerged lands

As Land Commissioner, I am elected by the people of Texas to give proper stewardship to our state submerged lands and other land holdings. Enactment of this legislation will greatly assist these management efforts and I would urge you and your colleagues to give favorable consideration to H.R. 3558

I am aware of the favorable action taken by the House on similar legislation last Congress, and I want you to know of my eagerness to continue to work with you to get final enactment this Congress. I would be pleased to help in any way I can from my vantage point as Land Commissioner of Texas.

Sincerely,

  
 Garry Mauro

GM/lr

cc The Hon Jim Wright  
 The Hon. Solomon Ortiz  
 The Hon Jack Fields

Garry Mauro  
 Commissioner  
 General Land Office

S. J. F. 11/11/85  
 11/11/85  
 11/11/85  
 11/11/85

~~H. R. 3558, Abandoned Shipwreck Act~~  
~~10-29-85~~

# NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Suite 132 Hall of the States  
 444 North Capitol Street NW  
 Washington D C 20001

(202) 624 5465

October 24, 1985

Hon Barbara A Mikulski, Chairwoman  
 Subcommittee on Oceanography  
 Committee on Merchant Marine and Fisheries  
 Room 1334, Longworth House Office Building  
 Washington, D C 20515

RE H R 3558 - Abandoned  
 Shipwreck Act of 1985

Dear Representative Mikulski

I am writing to express the strong support of the State Historic Preservation Officers for H R 3558, the Abandoned Shipwreck Act of 1985

The current version of the bill makes clear that the multiple values present in abandoned shipwrecks should be recognized, protected, and managed for multiple uses (and users) in a responsible manner. Historic shipwrecks represent a particularly valuable and fragile resource and, in our opinion, the prospects for the long term preservation and wise management of these resources will be greatly enhanced by the bill.

Most importantly, the bill clarifies the ownership of abandoned shipwrecks within State waters as defined by the Submerged Lands Act. The States already manage all other resources and activities within State waters, and so it is appropriate that abandoned shipwrecks fall under the ownership and management of the States. The anomaly of the current situation, in which shipwrecks alone may be subject to claims in federal admiralty courts, has created confusion and resulted in contradictory court decisions. The States, under various State and federal authorities, have each developed historic preservation programs to identify and protect significant historic and archeological properties. In addition, twenty-six States have specific programs in place for the protection and management of underwater sites.

In reviewing Section 6(a)(3)(A), there is one provision which requires clarification to ensure that it is workable. Although there is no statutory prohibition to State Historic Preservation Officers seeking determinations of National Register eligibility, the current regulations of the National Register program permit such a request only by federal officials in connection with a federal project, or by an SHPO when a property owner refuses to allow a nominated site to be entered on the National Register. In terms of H R 3558, neither of these provisions is applicable, even though an expeditious determination of National Register eligibility may be key to

ADMINISTRATORS OF THE NATIONAL HISTORIC PRESERVATION ACT IN THE FIFTY STATES  
 THE DISTRICT OF COLUMBIA THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN  
 MARIANAS ISLANDS THE TERRITORIES OF AMERICAN SAMOA GUAM AND THE VIRGIN  
 ISLANDS AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS

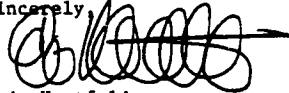
bringing a significant shipwreck under the provisions of the bill

We therefore request that any report language accompanying H R 3558 include a clear directive to the Secretary of the Interior to respond in timely fashion to requests for determinations of National Register eligibility under Section 6(a)(3)(A) of the bill

I am enclosing a copy of a resolution adopted by our membership at their annual meeting in March, 1985, in support of H R 25, the previous version of the current bill. The addition of Section 4, Rights of Access, in the current bill in no way changes our support for this legislation

Thank you

Sincerely,



Eric Hertfelder  
Executive Director

EH:fr

Enclosure

# NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

Suite 332 Hall of the States  
444 North Capitol Street NW  
Washington D.C. 20001

(202) 624 5465

MOTION PASSED AT THE  
NCSHPO ANNUAL MEETING  
WASHINGTON, D C  
MARCH, 26, 1985

Moved by Thomas Merlan and seconded by William Farrar that

WHEREAS, historic shipwrecks are part of our nation's cultural heritage,  
and

WHEREAS, states have been managing these resources and other submerged  
resources for the benefit of the public, and

WHEREAS, the preservation of abandoned historic shipwrecks in state waters  
has been threatened by ambiguities resulting from conflicting federal court decisions  
on the ownership of the shipwrecks, and

WHEREAS, H R 25 and companion Senate legislation propose to resolve these  
ambiguities by clarifying the states's title to the management authority over these  
historic shipwrecks,

NOW, THEREFORE, BE IT RESOLVED that the National Conference of State Historic  
Preservation Officers endorses and supports H R 25 and companion Senate legislation  
to protect historic shipwrecks

ADMINISTRATORS OF THE NATIONAL HISTORIC PRESERVATION ACT IN THE FIFTY STATES  
THE DISTRICT OF COLUMBIA THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN  
MARIANAS ISLANDS THE TERRITORIES OF AMERICAN SAMOA GUAM AND THE VIRGIN  
ISLANDS AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS



## Coastal States Organization

*An alliance of the Coastal States, Commonwealths, and Territories providing  
an effective voice in the formulation, development, and implementation  
of national marine and coastal resource programs and policies.*

### CHAIRMAN

Richard F. Delaney  
Boston, Massachusetts  
(617) 727-9530

### DIRECTOR

R. Gary Magnuson  
Washington, D C  
(202) 625-9636

October 25, 1985

The Honorable Barbara A Mikulski  
Chairwoman  
Subcommittee on Oceanography  
House Merchant Marine and Fisheries Committee  
H2-541 House Annex II  
Washington, D C 20515

Dear Representative Mikulski

The Coastal States Organization (CSO) appreciates this opportunity to submit a statement in support of legislation which would grant the states authority to manage and protect historic shipwreck resources submerged in state territorial waters

The CSO, representing the governors of the 35 coastal states and territories, is the states' leading advocate for sound marine resource management and protection. Non-profit and non-partisan, the organization meets periodically to discuss and arrive at a consensus on national coastal issues of concern to its member states. Once consensus has been reached, the membership, consisting of governor-appointed delegates, adopts a policy position reflecting CSO's official viewpoint.

At its semi-annual meeting in May, 1985, the CSO voted to adopt a policy position on the conservation of historic shipwrecks. I am enclosing a copy of that policy position for the Committee's review.

The CSO believes that the passage of federal historic shipwreck legislation is essential to clarify state rights to claim jurisdiction over and title to abandoned shipwrecks of cultural and historical significance buried in submerged state lands.

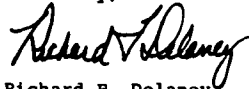
Historic shipwrecks constitute an irreplaceable and sometimes priceless archeological resource of educational, recreational, cultural and scientific value to the general public and various interests. However, under the traditional "finders-keepers" maritime law of salvage, these shipwrecks have been vulnerable to damaging exploitation by commercial salvage operations.

WASHINGTON OFFICE HALL OF STATES, SUITE 312, 444 NORTH CAPITOL ST, N W WASHINGTON D C 20001

Most of the coastal states - 25 of them to date - have already taken the initiative in passing legislation which governs the use and preservation of historic shipwrecks within their domains. Ambiguity still exists, however, between the states, through their authority under the Submerged Lands Act of 1953, and the salvagers, through federal admiralty court law, over the question of rightful ownership.

The states have demonstrated their commitment to managing the multiple uses of valuable historic shipwreck resources. Congress should act now to affirm state jurisdiction over shipwrecks in submerged state lands, in order to facilitate proper management and conservation of these unique resources for the benefit of all citizens.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard F. Delaney". The signature is fluid and cursive, with the first name "Richard" and last name "Delaney" clearly distinguishable.

Richard F. Delaney  
Chairman

Enclosure

Conservation of Historic Shipwrecks

The Coastal States Organization (CSO) supports the conservation of abandoned shipwreck resources of historical and cultural significance which are buried in submerged state lands. Historic shipwrecks are a finite resource subject to multiple-use demands, primarily from three major groups -- recreational divers, archaeologists and treasure salvors

In recent years, disputes have arisen over rights to ownership of and management authority over these shipwrecks. The states have held title to the submerged lands and natural resources within state territorial waters for many years, and this title was reaffirmed by passage of the Submerged Lands Act in 1953. Whether or not shipwrecks found on state lands are included within the jurisdiction of the Act has been subject to question in the courts. Some court decisions have supported the validity of state claims to shipwrecks, while others have upheld the traditional federal admiralty law of salvage.

The CSO believes that resolution of these differences can best be achieved through the enactment of legislation which grants states jurisdiction over abandoned shipwrecks on submerged state lands. The states have already demonstrated their commitment to managing historic shipwrecks. All the states have legislation and programs in place to protect historic archaeological resources, while 25 states have passed specific laws governing the use and preservation of abandoned historic shipwrecks within their boundaries. It is fitting that states now assume the role of responsible managers in determining the multiple use of various historic shipwreck sites within their territorial waters.

The CSO, therefore, encourages Congress to enact legislation affirming state title to and jurisdiction over a properly constructed program in which states retain control over excavations on state lands to encourage the proper management and conservation of these abandoned shipwrecks, while allowing access to the resources by sport divers and other interested groups.

Adopted May 3, 1985



Underwater Archeological Society of Maryland, Inc.  
University of Baltimore / Charles at Mt. Royal / Baltimore / Md. / 21201

October 25, 1985

Oceanography Subcommittee  
Washington, D C

Dear Subcommittee Members,

On behalf of the Underwater Archeological Society of Maryland I would like it known that as a body the Society supports and is in favor of passage of H R 3558

The Underwater Archeological Society of Maryland is a volunteer organization comprised of sport divers, archeologists, conservators, researchers, dive shop owners and those interested in studying, researching, cataloging, surveying, preserving, and the inventory of submerged cultural resources, particularly historic shipwrecks, in the State of Maryland

The Society has more than 150 members throughout the State of Maryland and the surrounding Washington, D C metropolitan area

The Underwater Archeological Society of Maryland supports the adoption of H R 3558 so that wanton destruction of historic shipwreck sites for salvage only, will not continue. Information lost is knowledge lost, and the value of information that can be obtained by studying, rather than by destroying, historic shipwreck sites would benefit everyone. If indiscriminant salvage is not controlled, a great part of our heritage will subsequently be lost.

The Underwater Archeological Society of Maryland feels that establishment of title of States to certain abandoned shipwrecks in State waters is legislation whose time has come.

The Underwater Archeological Society of Maryland urges the Subcommittee to recommend passage of H R 3558

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas M. Freda". The signature is fluid and cursive, with a large, stylized "N" and "F".

Nicholas M. Freda  
President,  
Underwater Archeological  
Society of Maryland

~~H R 3558, Abandoned Shipwreck Act~~  
~~10-29-85~~

## SHEEHAN, PHINNEY BASS &amp; GREEN PROF ASS'N

1000 ELM STREET

MANCHESTER NEW HAMPSHIRE 03101 1799

603-668-0300

WY B GREEN  
 JOSEPH DEWAN  
 RICHARD A. MORSE  
 NICHOL B. SACHS  
 ROBERT E. DART N  
 ALAN L. RE SCHE  
 JAMES E. HODGINS  
 THOMAS H. RICHARDS  
 JOHN B. RICHARDSON  
 W. MICHAEL DUNN  
 PETER F. EARNB  
 ARNE O. SMILEY  
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 MARK WEAVER  
 ELIZABETH T. LUTTER  
 ANNE ROSE  
 DAN EL R. SCHWARZ

WILLIAM L. PHINNEY  
 908-1977

JOHN J. SHEEHAN  
 PERKINS BASS  
 COUNSEL

WAYNE T. MURRAY  
 ADMITTED IN MAINE  
 AND MASSACHUSETTS ONLY

EXETER OFFICE

108 HIGH STREET  
 P. O. BOX 610  
 EXETER NEW HAMPSHIRE 03833  
 (603) 778-0566

October 29, 1985

WY ER S D RECT QAL NUMBER

(603) 627-8149

Hon Barbara Mikulski  
 Oceanography Subcommittee  
 Merchant Marine & Fisheries Committee  
 U.S. House of Representatives  
 541 House Annex II  
 Washington, D C 20515

Dear Congresswoman Mikulski

Thank you for sending a copy of H R 3558, establishing the title of States to abandoned shipwrecks. As a sports diver with an interest in nautical archaeology, I see the bill as critical to the preservation of our maritime heritage as a public legacy and for the protection of the rich archaeological data often found at underwater and intertidal sites.

The Abandoned Shipwreck Act of 1985 effectively removes those archaeological resources which happen to be found under water and embedded within public lands from the inappropriate legal treatment normally accorded distressed vessels under admiralty law. There is no common public policy underlying the preservation of archaeological sites and the returning to commence of the imperiled cargo of wrecked vessels. Although admiralty law may well and properly serve the latter, it is singularly irrelevant to policies of archaeological and historical preservation.

Presently, once an underwater site is thought, rightly or wrongly, by a treasure salvor to contain saleable artifacts or bullion, the area is unlikely to remain available for study or use by archaeologists, sports divers, and other members of the interested public. Wholesale destruction of the site by treasure seekers' carelessly ripping away anything which does not shine, and their "fencing-off the

SHEEHAN PHINNEY BASS & GREEN  
PROF ASS N

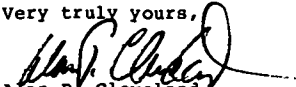
Hon Barbara Mikulski  
Page 2  
October 29, 1985

range" by receiving from the admiralty courts exclusive license to exploit the area, more closely resembles strip-mining than any recognizable form of sport diving. The real tragedy of the present situation is that for every discovered lode of cobb coins actually recovered by treasure salvors, hundreds of wreck sites as time capsules containing no gold but rich in archaeological data are smashed beyond use.

If this indiscriminate pillaging of our cultural heritage were to occur on land, we would see it for what it is -- barbarism -- and find it intolerable. Passage of H R 3558 would end this irrevocable waste, and assure public access to that archeological data now embedded in our public lands as a public resource.

Thank you for the opportunity of permitting me to comment favorably on H R 3558.

Very truly yours,



Alan P Cleveland

APC/pv

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Representative Barbara A. Mikulski  
 Chairwoman, Subcommittee on Oceanography  
 U.S. House of Representatives  
 Rm. 1334, Longworth House Office Building  
 Washington, D.C. 20515

Dear Representative Mikulski,

Thank you very much for the opportunity to appear at the hearing earlier this week on H.R. 3558, the Historic Shipwreck Act. It was a very informative session, and I benefited greatly from the exchange of views. I would like you to consider this letter as an additional statement, for the record, in support of H.R. 3558.

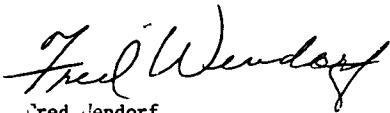
As currently drafted, I regard H.R. 3558 as a compromise which should achieve most of the goals of those of us interested in the preservation of our historic heritage, and would permit the States to regulate the resources on their lands. It will also ensure that sports scuba-divers will have reasonable access to shipwrecks. I regard sports scuba-divers as the "amateur archaeologists" of underwater archaeology and their support and participation are vital for the protection of historic shipwrecks.

I oppose any commercial exploitation of our historic heritage. There is a serious conflict between the goals of treasure hunters and those of historic preservation, which cannot be reconciled by legislation. However, I am prepared to allow those States, which feel that they can regulate and control commercial treasure hunting for the public interest, the option of trying to do so. I would point out, however, now much better it would have been for future generations had the recent discoveries by Fisher and his associates been properly studied, the data on the arrangement of the ship's structure and its contents recorded, and the objects recovered not for the benefit of a select few, but for the benefit and enrichment of everyone. Although these treasure hunters protest otherwise, as an underwater archaeologist, I can assure you that it would not be possible to record the positions of the 6000 coins which are reported to have been brought up in a single day. One has only to look at the television reports of Fisher's activities to see that these

wrecks are being excavated with, at most, only a token gesture toward proper scientific control. As noted in Money magazine, this may be because of the pressure from investors, who receive their returns on the basis of the material recovered over a specified period of time. It is a myth that treasure hunters behave otherwise.

Much of the discussion over treasure hunters and the protection of historic shipwrecks is very reminiscent of the disputes which surrounded the passage of our first Antiquities Act in 1906, as recorded in the Congressional Record (PL 34-209, 34th Congress S.L. 225, June 8, 1906). In that instance, some "good old boys" were looting pottery and other objects from cliff dwellings, on public lands in the American Southwest, and selling these to collectors and museums in Europe. They were strongly defended in Congress because the proposed Antiquities Act would deny them their livelihood it was "free enterprise", and what damage could be done by the loss of a few pots? Fortunately, after several years of debate the forces of preservation won out, the treasure hunters were "retired", and today all of us are able to enjoy the beauties of Mesa Verde, Hovenweep, and Chaco Canyon, and our knowledge of the past cultures of that area is the envy of the rest of the world.

Sincerely,



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